TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 176

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER,

vs.

STANDARD OIL COMPANY OF KENTUCKY

No. [redacted] 177

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, PETITIONER,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 2, 1927

WRITS GRANTED MARCH 21, 1927

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(32,439, 32,440)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 872

ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER,

vs.

STANDARD OIL COMPANY OF KENTUCKY

No. 873

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, PETITIONER,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. a]

IN SUPREME COURT OF THE UNITED STATES

October Term, 1926

No. —

The Atlantic Coast Line Railroad Company, Petitioner,

vs.

Standard Oil Company, a Corporation of Kentucky, Respondent

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

Thos. W. Davis, Wilmington, Del., Helm Bruce, 1710 Inter Southern Building, Louisville, Ky., Attorneys for Petitioner,

Charles G. Middleton, Inter Southern Building Louisville, Ky., Attorney for Respondent

Transcript of Record

[fol. 1] In United States District Court for the Western District of Kentucky

Standard Oil Company, a Corporation of Kentucky, Complainant,

vs.

The Atlantic Coast Line Railroad Company, a Corporation of Virginia, Defendant

Bill of Complaint—Filed July 12, 1926

To the Judge of the United States District Court for the Western District of Kentucky, sitting in equity:

Your complainant, the Standard Oil Company, brings this its bill of complaint against the Atlantic Coast Line Railroad Company, a corporation of Virginia, for the purpose of obtaining a preliminary injunction and a perma-

nent decree and injunction restraining and forbidding the defendant from charging the complainant herein for the transportation of gasoline, refined oil, lubricating oil and other products of petroleum from the cities of Port Tampa, Tampa and Jacksonville, all being in the State of Florida, to other points in the State of Florida, over and by intrastate routes, any rate or rates of freight other than the lawfully established intrastate rates for such commodities.

The complainant states:

First. That the complainant is a corporation organized under and existing by virtue of the laws of the State of Kentucky and is a citizen of said State and of the Western District of Kentucky, within the meaning of the provisions of the Judicial Code prescribing the jurisdiction of this Honorable Court, having its home office and principal place of business in said State and District, at Louisville.

Second. That the defendant is a corporation organized under and existing by virtue of the laws of the State of Virginia and is a citizen of the State of Virginia within the [fol. 2] meaning and contemplation of the statutes prescribing the jurisdiction of this Honorable Court; that the defendant is engaged in the business of operating a railroad in various states of the Union, including the State of Florida, and is also authorized to do business and is engaged in the doing of business in the State of Kentucky, and has designated an agent for the service of process therein.

Third. That the amount involved in this suit exceeds the sum of $3,000, exclusive of interest and costs, and that the jurisdiction of this Court is invoked by the complainant on the ground of diversity of citizenship, the complainant being a citizen and resident of Kentucky and the defendant being a citizen and resident of Virginia and the subject matter involving more than $3,000.

Fourth. That the complainant is a corporation engaged in the business of buying and selling gasoline, refined oil, lubricating oil and other petroleum products and is engaged in such business in the State of Kentucky and in the State of Florida and has been so engaged for many years past; that it maintains in the State of Florida and in the cities of Port Tampa, Tampa and Jacksonville,

in said State, very large storage facilities hereinafter more particularly described; that said storage facilities consist of tanks, large and small, and warehouses for the purpose of receiving and storing gasoline, refined oil and other petroleum products, and that from said storage tanks and warehouses the complainant supplies its customers throughout the State of Florida, in the manner hereinafter more particularly described; that the complainant purchases all of the gasoline, refined oil, lubricating oil and other petroleum products, which it sells to its customers in the State of Florida, and that, with the exception of a small percentage of its purchases hereinafter mentioned, all of its said purchases of said petroleum products are brought into Port Tampa and Jacksonville in steamers owned or chartered by the sellers, and said gasoline and other petroleum products are pumped from said steamers through pipe lines into the storage tanks of the complainant at Port Tampa and at Jacksonville, Florida; that all of said gasoline and other petroleum products are purchased by the complainant delivered into the complainant's tanks at said points, and none of said gasoline or other petroleum products becomes the property of the complainant herein until delivered as aforesaid into the complainant's tanks. Complainant states that said gasoline and other petroleum products mentioned come to rest in its [fol. 3] tanks at the points hereinabove mentioned and from said points the complainant supplies its trade throughout the State of Florida; that the method of doing business and of supplying its Florida trade from the several points mentioned varies somewhat at the points mentioned and with the different kinds of petroleum products sold, a particular description of the complainant's business and of each product being as follows:

(a) Port Tampa—Gasoline. The complainant maintains at Port Tampa for the storage of gasoline five storage tanks of a total capacity of approximately 110,000 barrels, an average capacity for each tank of 22,000 barrels. All gasoline purchased by the complainant for delivery into storage tanks at Port Tampa moves in ships owned or chartered by the sellers, and the delivery to the complainant takes place when said gasoline is pumped through pipe lines into the complainant's storage tanks.

The said gasoline remains in the complainant's storage tanks at Port Tampa for several months, the exact time depending entirely upon business conditions and demands in that section of Florida supplied from Port Tampa, but, under ordinary and usual business conditions, the complainant has on hand at Port Tampa sufficient gasoline to take care of its requirements of from forty-five to sixty days, and the complainant pays local taxes to the State of Florida on all said gasoline on hand on the Florida assessing days. No gasoline coming into Port Tampa is sold before such gasoline becomes the property of the complainant, when, as hereinabove set forth, it is delivered into the complainant's storage tanks at said port.

The complainant maintains at a number of other points in the State of Florida bulk stations where it has sufficient tankage and storage to meet the immediate needs of each of said bulk stations. The complainant ships its gasoline in tank cars from Port Tampa to these various bulk stations from which it is delivered by tank wagon to complainant's customers in the State of Florida. The complainant also maintains a number of service stations in the State of Florida, and occasionally a service station is supplied with gasoline in tank cars shipped directly from Port Tampa, but, in the usual course of business, service stations are supplied directly from bulk stations. Also a large number of complainant's customers are supplied by tank wagons directly from bulk stations.

[fol. 4] The complainant ships no gasoline from Port Tampa to points other than those in the State of Florida. The complainant does not know when it receives and accepts said gasoline in its storage tanks at Port Tampa where the said gasoline will eventually go or to whom it will be sold, except that it knows that it will go to some place and will be sold to some one in the State of Florida, but the exact disposition of the gasoline depends entirely on the requirements of the bulk stations supplied from Port Tampa and the demands of its customers at those points.

(b) Port Tampa—Refined Oil.—The complainant states that the common name for refined oil here mentioned is kerosene; states that it maintains at Port Tampa two storage tanks of approximately 20,000 barrels capacity, or

an average capacity of 10,000 barrels each; that refined oil is received by the complainant herein at Port Tampa and sold from said point in exactly the same manner as gasoline is received and sold, and the facts, as stated above, in regard to gasoline apply equally to refined oil.

(c) Port Tampa—Lubricating Oils.—The complainant states that the lubricating oils received by it at Port Tampa are purchased by it and delivered by the sellers in vessels chartered or owned by the sellers, and said lubricating oils do not become the property of the complainant herein until pumped from said vessels into tank cars leased by the complainant. After said lubricating oils are pumped from the steamers to the tank cars, the tank cars are switched to Tampa, where the lubricating oils are pumped from the tank cars into storage tanks belonging to the complainant and from which storage tanks the complainant supplies its Florida lubricating oil business by tank wagon, or in barrels, or in smaller containers, according to demands of customers. A small percentage of lubricating oil does not move to Tampa from Port Tampa but is shipped directly from Port Tampa to the complainant's bulk stations, where it is pumped from the tank cars into complainant's storage tanks at said bulk stations. Except as indicated, lubricating oils are handled from Port Tampa in exactly the same way as gasoline is handled.

(d) Port Tampa—Fuel Oil.—The complainant maintains at Port Tampa seven tanks for fuel oil, with a total capacity of 127,000 barrels, or an average capacity of about 18,000 barrels to each tank. The fuel oil is purchased by the complainant and is shipped to Port Tampa from points outside of the State of Florida in tank steamers belonging [fol. 5] to or chartered by the sellers, and said fuel oil becomes the property of the complainant herein as and when the same is pumped from the tank steamers into complainant's storage tanks at Port Tampa. All of said fuel oil is sold by the complainant within the boundaries of the State of Florida. Approximately ninety-five per cent of said fuel oil is sold to customers in Florida on contracts made before the fuel oil comes to rest at Port Tampa. Practically all contracts made by the complainant with its customers for the sale of fuel oil are made for one year, although a few of them are made for shorter periods.

About five per cent of the fuel oil sold by the complainant in Florida is sold currently and not on contracts previously made. The complainant, however, maintains at Port Tampa approximately thirty to sixty days' supply of fuel oil, and there is no separation of the fuel oil under contract from that not under contract in the complainant's storage tanks at Port Tampa. All of said fuel oil is of the same grade and none of it is allocated to any particular contract. All of said oil is stored in the complainant's tanks in bulk and is distributed to various points as needed, the distribution takes place according to the demands of the complainant's customers, which vary from time to time, and the actual deliveries are irregular as to time and amount, so that the complainant cannot say where any particular cargo of fuel oil which is pumped from the vessels into its tanks at Port Tampa will go or to whom it will go. Port Tampa is a large storage point for fuel oil, and when the complainant purchases fuel oil to be delivered to it at Port Tampa, the only destination which the complainant can give is Port Tampa.

(e) Jacksonville—Gasoline.—The complainant maintains at St. Johns River, Jacksonville, Florida, large storage facilities for gasoline, its total tankage capacity for said product at said point being five tanks with a total capacity of 105,000 barrels, or an average capacity of 21,000 barrels each; that gasoline is received, by the complainant at Jacksonville exactly as gasoline is received by the complainant at Port Tampa and is sold from Jacksonville in exactly the same way, except that approximately thirty per cent of its gasoline received at Jacksonville is used to supply points in Georgia and Alabama, and seventy per cent is used to supply points in Florida only.

(f) Jacksonville—Refined Oil.—Refined oil purchased by the complainant and received at Jacksonville is handled [fol. 6] and sold in exactly the same way as that received at Port Tampa, except that approximately twenty-eight per cent of the refined oil purchased and received at Jacksonville is used to supply Georgia and Alabama business.

(g) Jacksonville—Fuel Oil.—The fuel oil purchased by the complainant and received at Jacksonville is sold and handled in exactly the same way as that received at Port

Tampa, except that an occasional shipment of fuel oil moves from Jacksonville into Georgia.

(i) Jacksonville—Lubricating Oil.—The complainant purchases and receives lubricating oil by tank steamer at Jacksonville, and said lubricating oils are pumped from the steamers into tank cars leased by the complaint, all of which is then transported in tank cars a distance of about two miles across the City of Jacksonville to complainant's bulk station located at a point known as King's Road, in the City of Jacksonville, and there pumped into storage tanks of the complainant, there being 19 storage tanks maintained for lubricating oil at said point. In addition to lubricating oil that comes to Jacksonville in tank steamers, some lubricating oil comes in tank cars from Eastern refineries, but all of said lubricating oil at Jacksonville is concentrated in the complainant's tanks at King's Road, and there the complainant maintains a supply of approximately sixty to ninety days. About ninety per cent of the lubricating oil at King's Road is barrelled by the complainant at said point and is delivered to various customers throughout the State of Florida in said barrels; that some barrel stations in Georgia and Alabama are supplied with lubricating oil through the Jacksonville station. About ten per cent of the lubricating oil at Jacksonville is used locally or occasionally leaves Jacksonville in tank cars for points in Southern Florida. Occasionally, complainant receives at Jacksonville lubricating oil in barrels or in cases and also some greases in cases and in barrels, all of which, however, is stored at King's Road to await orders in varying amounts from customers.

Complainant states that it owns no tank cars; that it leases the tank cars which it needs either from tank car line companies or from the railroads; that it ships only carload lots from Port Tampa, but that from Jacksonville it ships both full carload lots and less than car load lots.

Fifth. Complainant states that it is now carrying on its business in the State of Florida as hereinabove indicated and has been so carrying on its business in said State for [fol. 7] a number of years: that, with the exceptions noted, all of said business is intrastate business and complainant states that it is entitled to transportation over the de-

fendant's lines of railroad and those of other railroads upon the payment of intrastate rates prescribed or lawfully on file with the Railroad Commission of the State of Florida; that the defendant, up until June 15, 1923, recognized that the complainant's business was intrastate business and applied the intrastate rates applicable between Port Tampa, Tampa, Jacksonville and other points in Florida to the complainant's shipments, both in carload lots and in less than carload lots, and that said intrastate rates were applied by the defendant for many years prior to June 15, 1923. Complainant states, however, that, on June 15, 1923, and at all times since said date, the defendant has refused to accept shipments of the complainant herein from Port Tampa, Tampa and Jacksonville, Florida, to other points within the State of Florida at intrastate rates and has compelled the complainant herein to pay interstate rates for the transportation of shipments, and the complainant has paid all of the same under protest. Complainant states that the interstate rates which the defendant is applying to all of the complainant's shipments from the points named to other points in Florida are higher than the intrastate rates, and the complainant herein has remonstrated and objected to the application of such higher interstate rates, but that the defendant has paid and continues to pay no attention to the remonstrances and objections of the complainant. Complainant states that its methods of doing business in Florida prior to June 15, 1923, were exactly the same as those in use by it since said date, and this complainant states that there is and was no reason for the defendant to change from the intrastate rates which it formerly applied to the business of the complainant within the State of Florida to the interstate rates which it now compels the complainant to pay.

Sixth. Complainant alleges that the shipment of all of its products from Tampa, Port Tampa and Jacksonville, Florida, to other points within the State of Florida is intrastate business and the complainant is entitled to have the lawful intrastate rate applied to said shipments; that the conduct and demands of the defendant herein are and have been since June 15, 1923, wrongful and oppressive and in disregard of the complainant's rights and are not

only unauthorized in law but are in direct defiance of the [fol. 8] law. Complainant states that, if the defendant is not enjoined by this Honorable Court from enforcing other than the lawful intrastate rates, it will work irreparable harm to the complainant, and that the complainant herein is without remedy, unless this Honorable Court will issue an injunction enjoining the defendant from the wrongful acts herein complained of; that it has no other adequate remedy, except that afforded by a court of equity; that, if the complainant is compelled to pay the interstate rates upon all of its intrastate shipments within the boundaries of the State of Florida, it will be compelled to pay the said higher rates under protest and then will be compelled to bring a great number of actions against the defendant herein to the great annoyance and expense of the complainant and the defendant. Complainant states that, according to its records, it has already overpaid to the defendant herein between the dates of June 15, 1923, and April 17, 1925, the sum of $63,000. Complainant states that a decree of this Honorable Court sitting in equity can adjust all the matters in controversy between the complainant and defendant; that said decree can adjudicate and finally determine whether or not, under the circumstances as hereinabove set forth, the shipments of the products of the complainant herein within the State of Florida constitute intrastate business entitled to be transported at the intrastate rates, or whether said shipments constitute interstate commerce compelled to pay the interstate rates.

Wherefore, your complainant prays as follows:

(1) That a writ of subpœna be issued and directed to the defendant, commanding it upon a certain day and under penalty personally to appear before this Honorable Court and then and there make full, true and direct answer, but not under oath, answering under oath being expressly waived, to the bill of complaint herein, and to perform and abide by all the orders and decrees that may be made against it by this Honorable Court.

(2) That a temporary injunction and restraining order be issued by this Honorable Court against the defendant, enjoining and restraining and forbidding the said defend-

ant herein from charging the complainant or imposing upon it for the transportation of its products between Port Tampa, Tampa and Jacksonville, all in the State of Florida, to other points within the State of Florida, over routes lying wholly within the State of Florida, rates other than or higher than its lawfully published rates for the trans- [fol. 9] portation in intrastate commerce of such products within the State of Florida.

(3) That a perpetual injunction and restraining order be issued by this Honorable Court against the defendant, enjoining and restraining and forbidding the said defendant herein from charging the complainant or imposing upon it for the transportation of its products between Port Tampa, Tampa and Jacksonville, all in the State of Florida, to other points within the State of Florida, over routes lying wholly within the State of Florida, rates other than or higher than its lawfully published rates for the transportation in intrastate commerce of such products within the State of Florida.

(4) That, if, upon the final hearing of said case, this Honorable Court decides that the products of the complainant herein should be carried between points within the State of Florida over intrastate routes at the intrastate rates, that the case be referred to a Special Master for the purpose of having said Special Master hear and determine the overcharges which the complainant has been compelled to pay the defendant since June 15, 1923; that a judgment be thereupon entered in favor of the complainant and against the defendant for each of said overcharges with interest thereon at six per cent from the date the same were accepted by the defendant herein until paid.

(5) That a restraining order and injunction, temporary or perpetual, be directed against the defendant and all of its officers and agents.

(6) Complainant prays further for its costs in this behalf expended and for such other and further relief as may seem just and proper and necessary to this Court in the premises, and your complainant will ever pray.

Humphrey, Crawford & Middleton, Chas. G. Middleton, Attorneys for Complainant.

Duly sworn to by Arthur M. Stephens. Jurat omitted in printing.

[fol. 10] In United States District Court

Motion for Preliminary Injunction—July 7, 1925

The complainant, Standard Oil Company, moves the Court for a preliminary injunction, enjoining and restraining the defendant herein from charging the complainant or imposing upon it for the trasportation of its products between Port Tampa, Tampa and Jacksonville, all in the State of Florida, and other points within the State of Florida, over routes lying wholly within the State of Florida, rates other than or higher than its lawfully published rates for the transportation in intrastate commerce of such products within the State of Florida.

Chas. G. Middleton, Attorneys for Complainant.

[fol. 11] In United States District Court

Motion to Dismiss—July 7, 1925

Defendant moves the Court to dismiss the bill of complaint herein for insufficiency of fact to constitute a valid cause of action in equity; and among other grounds for said motion says plaintiff has a plain, adequate remedy at law for the alleged wrongs complained of herein by it.

Thos. W. Davis, Bruce, Bullitt, Gordon & Laurent, Attorneys for Defendant.

In United States District Court

Submission of Motions—July 7, 1925

This day appeared the complainant and filed a notice of motion for a preliminary injunction, duly served upon the defendant, and moved the Court for a preliminary injunction in accordance with the prayer of its Bill of Complaint herein.

The defendant appeared by counsel and objected to said motion for a preliminary injunction and also moved the Court to dismiss the Bill of Complaint herein. The defendant filed, to be read upon the hearing of the motion for an injunction, the affidavits of W. R. Pittman, Supplemental affidavit of W. R. Pittman, F. L. Glover, J. W. Morris, supplemental affidavit of F. L. Glover, V. E. Phelps, supplemental affidavit of J. W. Morris and extract from annual report of the Railroad Commission of Florida.

The plaintiff filed, to be read upon said hearing, the affidavit of Arthur M. Stephens.

The motion for a preliminary injunction and the motion to dismiss the Bill were argued by counsel for the respective parties and the Court not being sufficiently advised, it is ordered that said motions be submitted, with leave to the plaintiff to file its brief within one week and to the defendant to file its brief within one week thereafter.

[fol. 12] In United States District Court

Order Overruling Motions for Preliminary Injunction and to Dismiss—January 5, 1926

This day came the parties hereto and the Court being sufficiently advised, upon the pending motion, it is now considered, ordered and adjudged by the Court—

1. That plaintiff's motion for a preliminary injunction herein be and it is overruled to which plaintiff excepts, and—

2. The defendant's motion to dismiss bill of complaint for want of equity, be and it is overruled, to which defendant objects.

In United States District Court

Answer—Filed Jan'y 25, 1926

Defendant, Atlantic Coast Line Railroad Company, hereby makes answer to the bill of complaint herein, and,

while speaking in terms of the present, speaks as of the times referred to in the bill. It says:

1. The allegations of Paragraph 1 of the bill are admitted.

2. The allegations of Paragraph 2 of the bill are admitted.

3. The allegations of Paragraph 3 of the bill are admitted.

4. Defendant is without knowledge as to whether or not complainant purchases all of the gasoline, refined oil, lubricating oil or other petroleum products which it sells to customers in Fliroda, or as to whether or not, with the exception of a small percentage of its purchases, all of its purchases of said petroleum products are brought into Port Tampa or Jacksonville in steamers owned or chartered by the sellers. It denies that all of complainant's petroleum products are pumped from steamers into storage tanks.

Defendant is without knowledge as to whether or not all of said gasoline or other petroleum products are purchased [fol. 13] by complainant delivered into complainant's tanks; or as to whether or not none of said gasoline or other petroleum products becomes the property of complainant until delivered into complainant's tanks. It denies that said gasoline or other petroleum products comes to rest in complainant's tanks at points mentioned in the bill of complaint, or that it is from said points that complainant supplies its trade throughout the State of Florida.

a. Port Tampa—Gasoline.—Defendant is without knowledge as to whether or not all gasoline purchased by complainant for delivery into storage tanks at Port Tampa moves in ships owned or chartered by the sellers, or that the delivery to the complainant takes place when said gasoline is pumped through pipe lines into complainant's storage tanks. It denies that said gasoline remains in complainant's storage tanks at Port Tampa for several months, or at any time more than two months. It is without knowledge as to whether or not complainant pays local taxes to the State of Florida on all or any of its gasoline; or as to whether or not no gasoline coming into Port Tampa is sold before such gasoline becomes the property of the complain-

ant, or before it is delivered into complainant's storage tanks at Port Tampa.

Defendant is without knowledge as to whether or not complainant knows when it receives and accepts gasoline in storage tanks at Port Tampa where the said gasoline will eventually go or to whom it will be sold.

b. Port Tampa—Refined Oil.—Complainant having alleged in its bill of complaint that the refined oil is received by complainant at Port Tampa and sold from said point in exactly the same manner as gasoline is received and sold, and that the facts as stated in its bill of complaint with reference to gasoline apply equally to refined oil, defendant hereby adopts and applies to these allegations as to refined oil its allegations and denials above as to gasoline.

c. Port Tampa—Lubricating Oils.—Defendant is without knowledge as to whether or not the lubricating oils received by complainant at Port Tampa are purchased by it or delivered by the sellers in vessels chartered or owned by the sellers; or as to whether or not said lubricating oils do not become the property of the complainant until pumped from said vessels into tank cars. It is without knowledge as to how complainant handles its Florida lubricating oil business. So far as complainant adopts as to lubricating [fol. 14] oils the allegations of its bill as to gasoline, defendant adopts as its answer thereto the allegations and denials of its answer as to gasoline.

d. Port Tampa—Fuel Oil.—Defendant is without knowledge as to whether or not the fuel oil is purchased by complainant, or is shipped to Port Tampa from points outside of the State of Florida in tank steamers belonging to or chartered by the sellers; or as to whether or not said fuel oil becomes the property of complainant only as and when the same is pumped from tank steamers into storage tanks at Port Tampa; or as to whether or not all of said fuel oil is sold by complainant within the boundaries of Florida; or as to whether or not complainant can say where any particular cargo of fuel oil, which is pumped from vessels into its tanks at Port Tampa, will go, or to whom it will go; or as to whether or not when complainant purchases fuel oil to be delivered at Port Tampa, the only destination which the complainant can give is Port Tampa.

e. Jacksonville—Gasoline.—Complainant having adopted as to its handling of gasoline at Jacksonville the allegations of the bill of complaint as to the handling of gasoline at Port Tampa, defendant adopts as to the handling of the gasoline at Jacksonville its answer as to the handling of gasoline at Port Tampa.

f. Jacksonville—Refined Oil.—Complainant having adopted as to the handling of refined oil at Jacksonville the allegations of the bill of complaint as to handling refined oil at Port Tampa, defendant adopts as to the handling of refined oil at Jacksonville its answer as to the handling of same at Port Tampa.

g. Jacksonville—Fuel Oil.—Complainant having adopted as to the handling of fuel oil at Jacksonville the allegations of its complaint as to the handling of fuel oil at Port Tampa, defendant adopts as to the handling of fuel oil at Jacksonville its answer as to the handling of fuel oil at Port Tampa.

h. Jacksonville—Lubricating Oil.—Defendant is without knowledge as to how complainant acquires or handles lubricating oil received by it at Jacksonville, or as to what supply of lubricating oil it maintains at Jacksonville; or as to what per cent of the lubricating oil at Jacksonville is barreled by complainant and delivered to customers throughout the State of Florida in barrels; or as to what proportion of said lubricating oil is used locally at Jacksonville or leaves there in tank cars.
[Vol. 15] Defendant is without knowledge as to whether or not complainant owns any tank cars, or as to whether or not it leases the tank cars it needs.

5. Defendant denies that with the exceptions noted in the bill of complaint, all or any of the business referred to in the bill of complaint is intrastate business, or that complainant is entitled to transportation over defendant's lines of railroad, or those of other railroads, upon the payment of intrastate rates.

It denies that up until June 15, 1923, it recognized that complainant's business was intrastate business, or applied intrastate rates as to all of said business of the character referred to in the bill of complaint, although it admits that such intrastate rates were applied until that date on some

of complainant's business of the character referred to in the bill of complaint. The facts as to that situation will be hereinafter stated.

It denies that there is or was no reason for defendant to change from intrastate rates to interstate rates on June 15, 1923, so far as such change was made.

6. It denies that the shipment of all or any of the products referred to in the bill of complaint is intrastate business, or that complainant is entitled to have intrastate rates applied to any of said shipments; or that the conduct and demands of defendant referred to in the bill of complaint are or have been or that any of them have been, since June 15, 1923, wrongful or oppressive or in disregard of complainant's rights, or unauthorized in law or in defiance of law; or that the enforcing of the rates which it is enforcing and has been enforcing will work irreparable or any harm to complainant; or that complainant is without remedy if this Court should refuse the injunction prayed for in the bill of complaint; or that complainant has no other adequate remedy except that afforded by a Court of equity; or that complainant will in any event be compelled to bring a great number of actions against defendant if complainant is compelled to pay the interstate rates complained of.

Facts Stated Affirmatively

7. The following are the facts concerning complainant's methods of handling the business referred to in its bill of complaint. The statements hereinafter made as to these methods, although made in the present tense, are true as to all the time covered by the bill of complaint.

[fol. 16] Complainant is in the business of supplying petroleum products to consumers thereof in the interior of Florida. All of these products are acquired by complainant outside of the State of Florida; and it is known when they start in transportation from their points of origin that they are destined to be transported, not to the boundary only, or the coast line only, of the State of Florida, but to points within the interior of said State, subject only to such stoppages in transit as convenience and the necessity of change from water transportation to rail transportation may dictate and require. Complainant's methods of handling the

different kinds of petroleum products differ somewhat from each other and, for clarity, will be stated separately.

a. Port Tampa—Gasoline.—Complainant acquires its gasoline at points outside of Florida, such as in Mexico, Texas and Louisiana, and the same is transported by water from the States of its origin to Port Tampa on the west coast of Florida in tank steamers. Whether these tank steamers belong to or are leased by complainant, defendant is not able to say, because it does not know. But none of this gasoline is intended to be used, or is used, at Port Tampa. It is known when the gasoline starts from its point of origin that it is going on through Port Tampa to other points in the interior of Florida.

At Port Tampa complainant has certain receiving tanks for gasoline. These tanks have a capacity for holding about twice as much gasoline as is necessary to accommodate complainant's average monthly business—in other words, said tanks are capable of holding about twice as much gasoline as complainant sends by rail on an average each month from Port Tampa to points in the interior of Florida.

Complainant also has what it calls "bulk stations" for the storage of gasoline in the interior of Florida at various points, from which bulk stations it supplies gasoline to its customers in Florida, the capacity of the several bulk stations being sufficient to supply the needs of the territory surrounding the bulk stations. It also has certain filling stations, from which persons traveling in automobiles are directly supplied, and which filling stations are in turn supplied from the bulk stations.

When gasoline is brought by tank steamer to Port Tampa, it is first pumped from the steamer into the receiving tanks at Port Tampa, and thence pumped into tank cars on defendant's rails, which carry said gasoline on to complainant's bulk stations in the interior of the State of [fol. 17] Florida, from which stations it is distributed to complainant's customers in the neighborhood of such stations. And thus there is a continuous stream of said gasoline from its point of origin outside of Florida to and through Port Tampa, where the stream divides into smaller

streams, and thus the gasoline proceeds on to complainant's bulk stations in the interior of Florida, and in this way there is continuous transportation of such gasoline from its point of origin outside of Florida to complainant's bulk stations in the interior of Florida; and it is known to complainant and to those from whom it acquires said gasoline at the time the same starts from its point of origin outside of Florida that such is to be the course of its transportation and its destination; and the commerce therein is interstate commerce until the gasoline reaches at least the aforesaid bulk stations in the interior of said State.

b. Port Tampa—Refined Oil.—Complainant's method of handling refined oil through Port Tampa is the same as its method heretofore described of handling gasoline.

c. Port Tampa—Lubricating Oils.—Complainant has no receiving tanks for lubricating oils at Port Tampa; but it has such receiving tanks in the City of Tampa some miles distant from Port Tampa and reached by defendant's railroad lines from Port Tampa to Tampa. All of the lubricating oil received at Port Tampa is pumped directly from the steamer bringing the same through pipes into tank cars furnished by complainant and is then carried by defendant to complainant's receiving tanks at Tampa, as soon as shipping instructions and bills of lading are given and issued, which shipping instructions are generally given the day the oil is pumped into the cars at Port Tampa, or the following day.

d. Port Tampa—Fuel Oil.—Complainant acquires its fuel oil outside of the State of Florida, to wit, in Mexico, Louisiana and Texas, for supplying its customers in the interior of the State of Florida. Before or at the time of acquiring this fuel oil, complainant has contracts with customers in the interior of the State of Florida, for supplying them with such oil, and which contracts cover practically all of the oil thus acquired—at least 95% of it; and the oil is acquired by complainant for the purposes of filling these contracts with its customers at points in the interior of the State of Florida.

Complainant has on the west coast of Florida at Port Tampa certain receiving tanks for fuel oil. When the fuel

oil arrives by steamer at Port Tampa, it is pumped from the steamer through pipe lines into these receiving tanks, [fol. 18] and from the receiving tanks is pumped into tank cars, and by these carried on to the consumers thereof, complainant's customers, in the interior of said State. The capacity of complainant's receiving tanks for fuel oil at Port Tampa is only sufficient to hold about 40% in excess of one month's average supply of such oil, that is to say, the amount which complainant on an average transports from Port Tampa to its customers in the interior of said State. And thus there is practically a continuous flow of such fuel oil from points of origin outside of Florida to points of destination in the interior of Florida. And it is known to complainant when it acquires said fuel oil and when the same starts from its point of origin outside of Florida that it is destined for delivery to customers of complainant within the interior of the State of Florida and is not to stop at the coast of Florida, except to the extent of such stoppage in transit as may be made necessary for convenience in handling and in changing from water transportation to rail transportation. And such commerce is interstate commerce from the point of origin of said oil outside of Florida to the point of delivery to complainant's customers in the interior of Florida.

e. Jacksonville.—Complainant's method of transporting and handling petroleum products through the port of Jacksonville on the east coast of Florida is substantially the same as its method of handling such products through Port Tampa on the West coast of Florida, except that a substantial proportion of such products pass on through Jacksonville and through Florida to other States, such as Georgia and Alabama. And all of which business constitutes interstate commerce.

8. The facts as to conditions prior to June 15, 1923, the date referred to in the bill of complaint, are as follows:

Prior to that date there had been uncertainty in the minds of shippers and carriers as to whether business of the character referred to in this action constituted interstate commerce or, as to the part of it transported within the State of Florida, intrastate commerce. The Supreme Court of the United States had decided certain cases, which

bore upon the subject, and the Interstate Commerce Commission had likewise decided certain cases of the same character. The latest of these cases decided prior to June 15, 1923, was that of the International Agricultural Corporation and other phosphate mining companies vs. Director General of Railroads and this defendant and the Seaboard Air Line Railroad Company, 60 I. C. C. 726, before the [fol. 19] Interstate Commerce Commission in regard to the rate on fuel oil from Tampa and Port Tampa, Florida, to points in the interior of Florida, known as the "Bone Valley District," in which a great deal of fuel oil is consumed, and which involved the handling and transportation of fuel oil in the manner in which fuel oil is described in this answer as being handled by the complainant. That proceeding was instituted before the Interstate Commerce Commission on September 2, 1919, when the railroads of the country were still under the control of the Director General of Railroads of the United States. And it was decided by the Interstate Commerce Commission on March 5, 1921. In that decision the Interstate Commerce Commission treated the traffic involved as interstate traffic and made rulings and regulations concerning the same as such.

Following the decision of that case by the Interstate Commerce Commission, the defendant herein and the Seaboard Air Line Railroad Company applied interstate rates on fuel oil transported by them in the manner herein described from Tampa and Port Tampa, Florida, to points in the interior of Florida. But no action was taken immediately following said decision as to the transportation of petroleum products other than fuel oil, although the conditions were substantially similar.

However, the defendant, effective January 15th, 1922, published a complete line of rates on refined oil, gasoline and fuel oil, in carload lots, from the ports of Port Tampa and Tampa to Florida points, under heading reading "applicable interstate and/or intrastate" so that from January 15th, 1922, the rates from and to the points beforementioned were the same interstate and intrastate, and therefore it cannot be said that traffic moving under these rates subsequent to January 15th, 1922, was not treated as interstate commerce. The intent in giving interstate application to the afore-mentioned rates on refined oil,

gasoline, etc., in carload lots, from Port Tampa and Tampa was in conformity with the principle established as a result of the decision of the Interstate Commerce Commission in the International Agricultural Corporation Case, supra. Similarly the rates from Jacksonville to interior Florida points on refined oil and gasoline, carload, were prior to June 15th, 1923, generally not restricted and applied either on interstate or intrastate traffic, and the same thing was true as to a large number of fuel oil carload rates from Jacksonville so that traffic that moved from Jacksonville prior to June 15th, 1923, on such unrestricted and uniform [fol. 20] rates cannot be said not to have been moved under the interstate rates and in interstate commerce. However, defendant acknowledges that as to some petroleum products traffic moving from Tampa and Port Tampa to interior Florida points, while interstate rates were specifically provided to move such traffic, through misunderstanding there was a considerable movement of such traffic prior to June 15th, 1923, on basis of the intrastate rates. Defendant also admits that its practices and method of publishing rates were not uniform with those of competing lines.

The result of this was great confusion and great satisfaction. And this unsatisfactory situation having been brought to the attention of the executive officers of defendant and the Seaboard Air Line Railroad Company, the conclusion was reached by them that all of this traffic in petroleum products, such as herein described, should be treated and considered as interstate commerce, and that the interstate rates should apply to the same. And thereupon interstate rates were applied to said traffic under an adjustment of rates issued May 10, 1923, to take effect June 15, 1923, the date referred to in the bill of complaint, since which time all said traffic has been treated uniformly as interstate. In some cases the interstate rates on such traffic are less than the intrastate rates. In some cases they are the same. And in some cases the interstate rates exceed the intrastate rates.

Subsequent to the action of the Railroad Companies in treating all said commerce as interstate, and in applying the interstate rates thereto effective June 15, 1923, complainant herein, Standard Oil Company of Kentucky, re-

quested the Interstate Commerce Commission to suspend certain, or all, of the revised rates on petroleum products from Florida ports to Florida points. The Commission, through its Suspension Board, suggested to the Florida carriers, to wit, the Railroad Companies, to submit an explanation of the causes and conditions which led to their revision in rates. This explanation was made by the carriers. And the Interstate Commerce Commission denied the application of complainant for a suspension of said rates. And said rates have continued to the present time.

9. If defendant's course in charging interstate rates upon the commerce referred to in the bill of complaint, and as complained of therein, is wrongful, complainant has a complete and adequate remedy at law. It can bring an action at law against defendant in any Court of competent jurisdiction, alleging that it has been compelled to pay, and has [fol. 21] paid, unlawful and excessive rates on said commerce, and in such case the question can be determined whether such commerce is interstate or intrastate, and if it be determined that the same is intrastate, and that complainant has been required to pay more than was lawful to defendant, judgment can be given against defendant, and such judgment can be collected from defendant, which is entirely solvent and able to pay any such judgment that may be rendered. And if it should refuse to pay same, the amount thereof could be collected out of defendant by coercive process.

10. Moreover, the Statutes of the State of Florida, in which the business referred to in the bill of complaint has been conducted, furnish a remedy to complainant if it is right in its contentions herein in addition to the remedy by an action at law such as is referred to in the last preceding paragraph hereof. The Statutes of Florida contain the following provisions, being paragraphs 4649, 4650 and 4661 of the Revised General Statutes of Florida, Edition of 1920, which are still in effect, to wit:

"4649. Power to Sue in Behalf of Individuals, etc.—If any railroad, railroad company or other common carrier, doing business in this State shall, in violation or disregard of any rule, rate or regulation provided by the commissioners aforesaid, inflict any wrong or injury upon any per-

son, it shall be the duty of the railroad commissioners if requested by such injured person to institute proceedings to compel restitution and such action by the railroad commission shall preclude settlement by the party or parties injured without the consent of the commission. And if any railroad company or common carrier shall discriminate, by way of rebate, or otherwise, directly or indirectly, in favor of any consignor or consignee of freights within this State, or allow him a reduction of the rate fixed by said commissioners as reasonable and just, any other consignor or consignee of freights within this State shall have a right of action against the said railroad company or common carrier, and the amount of his damages shall be fixed by a jury, unless a jury shall be waived, and the measure of damages shall be such sum or sums of money as will fairly compensate the injury done to said last mentioned consignor or consignee. But in all such cases demand in writing on said railroad, railroad company or common [fol. 22] carrier shall be made for the money damages sustained before suit is brought for recovery under this section and all suits under this Article shall be brought within two years after the commission of the alleged wrong or injury, except in cases where the railroad commissioners have heretofore been or shall hereafter be, by refusal of such railroad or common carrier to observe the rates, rules, schedules or regulations by the railroad commissioners, compelled to resort to suits to enforce such rates, rules, schedules or regulations, and in such cases suits for such loss, damage or penalty may be brought within twelve months after the termination of such suits in favor of the railroad commissioners."

"4650. Rights of Injured Persons.—Any person, firm or corporation from whom any moneys shall have been exacted by any such company or common carrier in excess of the amounts properly chargeable under the provisions of this chapter, and any person, firm or corporation who shall have suffered any pecuniary injury by the violation of any such company or common carrier of any provisions of this chapter, shall have the right, by written demand, to require the commissioners to enforce recovery of his damages, and upon failure of the Commissioners to institute suit therefor within ninety days after such written demand, institute suit

in his own name against any such company or common carrier in any court of competent jurisdiction in the county in which the cause of action arose, or in any county in the State through or in which such company or common carrier runs or does business; and any such person, firm or corporation, upon establishing his right of recovery, shall be entitled to recover the total amount of such overcharge or other pecuniary injury, with interest thereon, together with such additional amount as the jury may find necessary to reasonably compensate him for all expense, including the value of his own time and services, and all reasonable cost and attorneys' fees incurred in the recovery of such damages, and such right of action shall exist in the legal representatives or assignee of any such person, corporation or firm."

"4661. Mandamus, Injunction etc.; Discovery of Names of Persons Damaged by Carrier's Violation of Law Compelling Payment, etc.—Said commissioners may, at their discretion, cause to be instituted in any court of competent jurisdiction in this State, by the Attorney General, State [fol. 23] Attorney or special counsel, designated by them, in the name of the State, proceedings by or for mandamus, injunction, mandatory injunction, prohibition or procendo, against any such company or common carrier subject to the provisions of this Chapter, or against any office or officer, agent or agents, thereof to compel the observance of the provisions of this Chapter, or any rule, rate or regulation of the commissioners made thereunder, or to compel the accounting for and refunding of any moneys exacted in violation of any one of the provisions of this Chapter. In all cases where any common carrier shall have become indebted or liable for damages to a large number of persons by reason of its failure to abide by or comply with the provisions of any rule, rate or regulation of the commissioners, or by its violation of any provisions of this Chapter, it shall be the duty of the railroad commissioners, to demand of such common carrier by written notice served upon it, a discovery of the names of all such persons and an accounting and payment to all such persons of all such indebtedness or damages, and if such common carrier shall refuse or shall fail to make such accountings and payments within sixty days after such notice shall have

been served upon it, it shall be the duty of the railroad commissioners to institute a proceeding or proceedings by or for mandamus or mandatory injunction against such common carrier to compel the making of such accountings and payments, and in any such proceeding upon an adjudication against such common carrier there shall be taxed as costs and paid over to the railroad commissioners to be paid out by them all such costs, attorneys' fees and expenses of such proceedings as shall appear to the court reasonable under all the circumstances and necessary to effect such accounting and settlement without cost or expense to the State or to the claimants, and the courts shall make all such orders as may be necessary or advisable to secure an accounting and payment of costs and damages as full and complete as may appear to be practicable, and any money not paid over to the persons to whom it shall be due within thirty days after such payment shall have been ordered made, shall be paid into the registry of the court to be disbursed to the proper persons upon orders of the court. And said commissioners are hereby given and granted full authority to do and perform any act or thing [fol. 24] necessary to be done to effectually carry out and enforce the provisions and objects of this Chapter."

And complainant herein has heretofore filed a petition before the Railroad Commission of Florida pending against this defendant and other Railroad Companies, and requesting the Florida Railroad Commission to proceed in a Court of competent jurisdiction for the issuance of process and a rule compelling and requiring this defendant, and the other Railroad Companies, to show cause why a temporary restraining order should not be issued, enjoining them from continuing to apply interstate rates upon shipments of the character referred to and described in the bill of complaint herein; whereupon said Florida Railroad Commission did file petitions in the Supreme Court of the State of Florida praying for a mandamus to compel this defendant, and the other railroads, to desist from charging said interstate rates, and requiring them to charge intrastate rates on petroleum products, whereupon an alternative writ of mandamus was issued out of the Supreme Court of the State of Florida, requiring this defendant, and the other railroads, to appear before said Court and show cause why

said intrastate freight rates should not be applied upon said products. This defendant duly answered said writ. But defendant is advised and says that complainant has shown no desire to have said cause prepared and brought on to final judgment; and the same is now pending in the Supreme Court of Florida remaining to be disposed of in accordance with the laws of that State.

Wherefore, defendant having fully answered, prays to be hence dismissed, and for a decree for its costs herein expended.

Thomas W. Davis, Helm Bruce, Attorneys for Defendant.

Duly sworn to by T. F. Darden. Jurat omitted in printing.

[fol. 25] In United States District Court

Opinion—Filed June 10, 1926

In this suit the plaintiff, Standard Oil Company of Kentucky, a corporation organized under the laws of the State of Kentucky, seeks to enjoin the defendant, Atlantic Coast Line Railroad Company, a corporation organized under the laws of the State of Virginia, from charging other than the lawfully published intrastate rates upon its products shipped over defendant's railroad in the State of Florida from Port Tampa, Tampa and Jacksonville to other points in that State over routes wholly within the State. The bill alleges that since June 15, 1923, the defendant has been wrongfully applying interstate rates to these shipments, and an accounting and recovery are asked against the defendant for the difference between the interstate and intrastate rates on these shipments. The particular facts relative to the manner in which plaintiff conducts its Florida business, out of which the shipments in question arise, will be more fully stated hereafter. A temporary injunction was asked by the plaintiff, to which the defendant seasonably objected, and at the same time moved to dismiss the bill because of want of equity therein, and particularly upon the ground that plaintiff has an adequate remedy at

law. On the hearing for a temporary injunction the Court, in an oral opinion, held that the case was one cognizable in equity, and overruled the motion to dismiss the bill, but denied the motion for a temporary injunction, leaving the merits of the case to be developed upon final hearing. The [fol. 26] case has been prepared on its merits and is now before the Court on final submission.

The claim of the defendant, that this action is not cognizable in equity because of the existence of an adequate remedy at law, is again urged upon the Court, and this question will be first considered.

It is an elementary equity rule that courts of equity do not have jurisdiction to grant relief, where the plaintiff has a plain, adequate and complete remedy at law. Section 267 of the Judicial Code is merely declaratory of this rule, which has always been binding upon the Federal Courts. In applying this equity rule, no discretion is left to the Court. If the plaintiff has a full, complete and adequate remedy at law, the bill must be dismissed. It is well settled, however, that to constitute an adequate remedy at law, the remedy must be as complete, practicable, and as efficient, both in respect to the final relief sought and the mode of obtaining it, as is the remedy in equity; Boise Artesian Water Co. v. Boise City, 213 U. S. 276; Tyler v. Savage, 143 U. S. 79; Kilbourne v. Sunderland, 130 U. S. 505; and must be available to the plaintiff in a Federal Court.

One ground urged by the plaintiff in support of its contention that the remedy at law is inadequate, is the familiar one that a multiplicity of suits will result unless equity is resorted to. It is pointed out that each separate shipment by the plaintiff constitutes a separate cause of action, and, if remitted to its remedy at law—provided one exists—it would have to bring a separate suit upon each shipment to fully protect its rights. One of the recognized grounds of equitable jurisdiction is that plaintiff would be subjected to a multiplicity of suits but for such intervention. Where, however,—

"* * * the multiplicity of suits to be feared consists in repetitions of suits by the same person against the plaintiff for causes of action arising out of the same facts and legal principles, a court of equity ought not to interfere

upon that ground, unless it is clearly necessary to protect the plaintiff from continued and vexatious litigation."

Boise Artesian Water Co. v. Boise City, supra.

It would seem equally sound to hold that where the multiplicity of suits urged as a basis of equitable jurisdiction consists merely of repeated suits by the plaintiff against the same defendant, upon causes of action identical in nature and arising out of the same facts and based upon [fol. 27] the same legal principles, equity ought not to intervene, unless it is clearly necessary to protect the plaintiff from a situation which he himself cannot control. It is true each shipment would constitute a separate cause of action, but a separate suit would not have to be brought on each shipment. The plaintiff could unite in one suit its claims growing out of each shipment made up to the time of filing its suit, and that action would fully determine every question which could be determined in an equity action. There would be no necessity for other suits, except possibly to avoid the statute of limitations, and, as intimated in the case of Boise Artesian Water Co. v. Boise City, supra, such suits would not be such a multiplicity of actions as is required to give equity jurisdiction.

Now, under the Florida law, the State Railroad Commissioners are given the power, and it is made their duty, to establish rates and charges for the transportation of freight and passengers on and over lines over which they have jurisdiction. These rates are made after an opportunity is given the carrier to be heard, and, when made, they are binding upon the carrier, except it can be shown in a suit in a Court of competent jurisdiction that they are unreasonable and confiscatory. When once made, shippers have a right to demand that these rates be applied to all shipments to which they are applicable. That right is expressly given by the statute, and the statute prescribes the method of procedure by which any shipper who has been charged more than the rates fixed by the Commissioners may recover the excess. Under Sections 4649 and 4650 of the Revised General Statutes of Florida, 1920 Edition, any shipper who has been charged by a common carrier more than the rates fixed by the Railroad Commissioners may make written demand upon the Commis-

sioners to bring suit against the carrier thus offending to recover the overcharge, and, if the Commissioners fail to comply with the request within ninety days after such written demand, then the shipper is free to prosecute a suit against the carrier in his own name. The decisions of the Supreme Court of Florida seem to hold that in an action for the recovery of the excess over the rates fixed by the Commissioners, the remedy furnished by the statute is exclusive. The Court has no hesitation in holding that the remedy furnished by the statute is not adequate to protect the plaintiff in the statutory right given it by the laws of Florida, to demand the application of the rates fixed by the Commissioners. For a remedy at law to be adequate, the plaintiff must have the right to bring a suit in his own name, [fol. 28] represented by counsel of his own selection, with the same right to direct his side of the litigation as is accorded to plaintiffs in other ordinary actions. Such rights are not given the aggrieved shipper by the statute. The action is instituted by the Commissioners; the conduct of the plaintiff's case is controlled by the Commissioners; the plaintiff's interests are not represented by counsel of his own selection. In short, the statute requires an aggrieved shipper to prosecute his law suit by proxy, and he does not even have the right to name his proxy. The law does that for him, and under the law he can not even settle the suit without the consent of the Commissioners. This remedy falls far short of being as full, complete, practicable and as efficient as the remedy given in equity.

It is insisted by the defendant, however, that if the shipper does not want to rely upon his statutory right to have applied to his shipments the rates fixed by the Commissioners, and to pursue the statutory remedy provided therefor, he may waive that right and remedy, and sue upon the common law right to recover any money charged him by the carrier in excess of just and reasonable rates, and that this common law remedy is as full, complete and adequate as that given in equity. The Supreme Court of Florida has expressly held that this common law action was not abolished by the right created by the statute, and that an aggrieved shipper may elect which of the two causes of action he will prosecute. Cullen v. Seaboard

Air Line Railway Co., 63 Fla. 122. A sufficient answer to the defendant's suggestion, however, is that the cause of action asserted by the plaintiff in this case is to recover the difference between the lawfully established intrastate rates and those charged by the defendant, and, as heretofore shown, for this particular cause of action the remedy at law given by the statute is not adequate. Defendant has suggested that the common law action recognized by the Courts of Florida is not a different cause of action from the statutory one, but merely a different way of enforcing the statutory cause of action; but this contention is not sustained by the Florida decisions, which hold that the common law action and the statutory action are entirely separate and distinct from each other, and that where the statutory cause of action is barred by limitation, the common law action may be maintained, if not itself barred by limitation.

So the statutory action and the common law action can not be said to be merely different remedies for the same right, and therefore the common law action permitted under [fol. 29] the law of Florida can not be said to be the equivalent of the right asserted by the plaintiff in this suit to have the rates fixed by the Commissioners applied to the shipments here involved. Should it be conceded that the common law action to recover money paid on rates in excess of reasonable rates, and this equity action based upon the rates fixed by the Commissioners, were but different remedies for the same right, it would not follow that equity would be without jurisdiction. In a suit to enforce the statutory rates, as such, the Florida law expressly provides that the rates fixed by the Commissioners shall be treated by the Courts as prima facie just and reasonable. Indeed, under the rule that the acts of duly constituted governmental agencies acting within their proper sphere are accepted by the Courts as prima facie correct, that would be the rule if the Florida law contained no such provision. So, in an equity action against the railroad company to enforce the rates fixed by the Florida Railroad Commissioners, if any question should arise as to the reasonableness of the rates relied upon, the burden would be upon the railroad company to establish their unreasonableness. On the other hand, in a common law action to recover money paid in ex-

cess of reasonable rates, it would be necessary for the plaintiff, in order to recover at all, to allege that the rates charged by the carrier were unreasonable and extortionate, and the burden would be upon plaintiff to prove their unreasonableness. No recovery could be allowed a plaintiff in such an action until he had established to the satisfaction of the jury, not only that the rates charged were unreasonable, but the extent of their unreasonableness. This would throw upon a plaintiff in the common law action a burden that he is not required to assume in an action in equity for the recovery of rates charged in excess of those fixed by the Commissioners, and it might be entirely possible that the rates fixed by a jury as reasonable in a common law action would not to any extent coincide with the rates fixed by the State Railroad Commissioners.

So, it is extremely doubtful if a remedy at law which throws upon the plaintiff the burden of proving that rates charged are unreasonable, and leaves to a jury the decision of such a question, is as full, practicable, complete and as efficient, either as to the final relief or the method of obtaining it, as is an equitable remedy which imposes no such burden upon the plaintiff. It may be suggested that this is a theoretical difficulty, and not an actual one, for the [fol. 30] reason that the Florida Courts held that even in the common law action the schedule of rates fixed by the Commissioners is prima facie evidence of what are reasonable rates; but it must be remembered that so far as the common law right is concerned, the Florida statute is merely a rule of evidence, and has no extraterritorial effect. The entire burden would be with the plaintiff in such a case, and it appears to this Court that it would be contrary to sound principles to hold that a rate fixed by the Railroad Commissioners of Florida, which is in no sense the basis of the action, would be prima facie evidence of the unreasonableness of the rate charged by the carrier. Of course, the plaintiff could bring its action in the State Courts of Florida and get the benefit of the statutory presumption, but a remedy is not adequate which must be pursued in the State Courts alone, where the plaintiff has the constitutional right to resort to the Federal Courts, as in this case. Plaintiff could probably get the benefit of the statutory presumption in the Federal Court of Florida,

but it can not sue the defendant in that court, because neither the plaintiff nor the defendant are citizens or residents of that State, within the meaning of the Judicial Code. So, in trying to enforce in this Court its common law right of action, the plaintiff would be confronted with substantial obstacles, with which it is not confronted in this equity action.

Again, in an action at law to recover money paid to a carrier in excess of reasonable rates, the question of what is a reasonable rate in any particular case would be a question of fact to be submitted to the jury. To determine what is a reasonable rate is always a most difficult problem for those trained in the consideration of such questions, and it is safe to say an almost impossible one for a jury. Furthermore, in a common law action, as in this equity action, the plaintiff's claim would be made up of alleged excessive charges on many shipments of different commodities from and to different points, probably carrying different rates. Not only would it be necessary to establish the reasonable rate on each commodity from and to the different points involved, but a complicated accounting would be necessary, and in matters of complicated accounting, the remedy in equity is generally regarded as more adequate and efficient than the remedy at law. Story, in his work on Equity Jurisprudence, Section 450, recognized this fact by stating:

[fol. 31] "There can be no real doubt that the remedy in equity, in cases of accounting, is generally more complete and adequate than it is or can be at law."

and this statement of Story's was quoted with approval by the Supreme Court in the case of Kilbourn v. Sunderland, 130 U. S. 505.

For the reasons stated, the Court is satisfied that the common law remedy afforded plaintiff is not as efficient, either as to the final relief sought or the mode of obtaining it, as afforded by this Court sitting as a Court of equity, and, in view of the conclusions already announced as to the inadequacy of the statutory remedy, it follows that the Court is of opinion that equity has jurisdiction of the cause of action stated in the bill.

Coming to the merits of the case, which involve the question of whether interstate or intrastate rates should apply on the movement of plaintiff's products involved in this case, a somewhat detailed statement of the manner in which plaintiff's business is conducted in the State of Florida becomes necessary.

The plaintiff is engaged, in the State of Florida, in the business of buying and selling gasoline, refined oil, lubricating oil, fuel oil and other petroleum products, and has been so engaged for many years. There is little if any, dispute about the way in which this business is conducted. As alleged in the pleading and established by the evidence, the business is conducted in substantially the following way.

Plaintiff maintains at Port Tampa, Tampa and Jacksonville, all in the State of Florida, very large storage facilities, consisting of tanks and warehouses for receiving and storing gasoline, refined oil, fuel oil and lubricating oil. Plaintiff does not produce nor refine any of these products sold by it to its customers in Florida, but, with the exception of fuel oil, practically all of them are purchased from the Standard Oil Company of Louisiana, and supplied by that company from its refineries at Baton Rouge, Louisiana, and its fuel oil is purchased from the Standard Oil Company of New Jersey, and supplied by that company from its source of supply at Tampico, Mexico; and all of the products so purchased are brought into Port Tampa and Jacksonville in tank steamers owned and chartered by the sellers, and, with the exception of lubricating oil, are pumped by ships' pumps from the steamers through pipe lines owned by the plaintiff into plaintiff's storage tanks at Port Tampa and at St. Johns River Terminal, Jack- [fol. 32] sonville, Florida. Lubricating oil is pumped from the tank steamers by ships' pumps into tank cars, and by them conveyed over defendant's lines to plaintiff's storage tanks at Tampa, a distance of about nine miles from Port Tampa, and to Kings Road, a distance of about two miles from St. Johns River Terminal.

All of these products are purchased by plaintiff, to be delivered to it by the sellers at Port Tampa and Jacksonville, title not passing to the plaintiff until the products have

been so delivered, settlement between the seller and purchaser being made upon the basis of the amount actually delivered into tank cars and tanks. The prices to be paid for gasoline, refined oil and lubricating oil are the current market prices in effect at the time the products are delivered to plaintiff at Port Tampa and Jacksonville. Fuel oil is purchased on yearly contracts at stipulated prices. The tank cars used by the plaintiff in its business are not owned by the railroad company, but are leased by the plaintiff and hauled by the defendant over its lines in common carrier service.

At Port Tampa plaintiff maintains for the storage of gasoline five tanks, with an aggregate capacity of 110,000 barrels; for refined oil, storage tanks with a total capacity of 20,000 barrels, and for fuel oil, tanks with a total capacity of 127,000 barrels; and at Jacksonville it maintains for the storage of gasoline, tanks with a total capacity of 162,000 barrels; for refined oil, storage tanks with a capacity of 40,000 barrels, and for fuel oil, storage tanks with a total capacity of 145,000 barrels.

All of the gasoline, refined oil, fuel oil and lubricating oil delivered to plaintiff at Port Tampa is sold in the State of Florida, while about seventy per cent of the gasoline and refined oil received by plaintiff at St. Johns River Terminal is sold in the State of Florida, as is practically all of the fuel oil and lubricating oil received at that point. Plaintiff's purchases of gasoline, refined oil and lubricating oil are made currently as the needs of the business and the condition of the market seem to justify, and at the time the purchases are made and at the time the product is received into the plaintiff's storage tanks at Port Tampa and St. Johns River Terminal, it has not been sold, and plaintiff does not know to whom it will be sold, when it will be sold, where it will eventually go, nor when it will be taken out of the storage tanks. None of the gasoline, refined oil, fuel oil nor lubricating oil received in the storage tanks at Port Tampa is disposed of locally, as there is no demand for any of same at that point, and the same thing is substantially true at Jacksonville, plaintiff knowing at the time said [fol. 33] products are purchased that they will ultimately be shipped to and disposed of at other points in Florida, and, to a small extent, in the States of Georgia and Alabama, from the Jacksonville tanks.

Throughout the State of Florida the plaintiff maintains bulk stations, where it has sufficient tankage and storage facilities for gasoline, refined oil and lubricating oil to meet the current needs of its customers supplied from the respective bulk stations. These bulk stations ordinarily get their supply of gasoline and refined oil from the storage tanks maintained at Port Tampa and Jacksonville, same being delivered to the bulk stations by means of tank cars, no gasoline or refined oil being delivered to consumers directly from the storage tanks at Port Tampa and Jacksonville. The gasoline and refined oils are delivered from the bulk stations to plaintiff's customers by means of tank wagons. Plaintiff also maintains a large number of service stations in the State of Florida, which, in the usual course of business, are supplied with gasoline and refined oil directly from the bulk stations, although occasionally a service station is supplied with gasoline shipped in tank cars directly from Port Tampa and Jacksonville.

Under ordinary business conditions plaintiff keeps in its storage tanks at Port Tampa and at Jacksonville a sufficient supply of gasoline and refined oil to take care of its requirements for from forty-five to sixty days; a sufficient supply of fuel oil to take care of its requirements for from thirty to sixty days; and in its storage tanks at Tampa and at Kings Road a sufficient supply of lubricating oil to take care of its requirements for from sixty to ninety days, the exact time depending entirely upon business conditions and demands for the products in that section of Florida supplied from the respective storage tanks. The plaintiff pays local taxes to the State of Florida on all of its products in hand in its storage tanks on the Florida assessing dates.

After the lubricating oil is placed in the storage tanks at Tampa and at Kings Road, it is distributed as sold in tank wagons, barrels and smaller containers, although a small percentage of same is sent out in tank wagon cars to plaintiff's bulk stations.

Approximately ninety-five per cent of the fuel oil sold by plaintiff in Florida is on contracts made before the oil has been shipped from the point of origin to plaintiff at Port Tampa and Jacksonville. Most of these contracts are for a period of a year, covering the requirements of the

[fol. 34] various consumers, with average monthly deliveries stipulated, although in actual practice shipments from the storage tanks to the consumers are accommodated to their needs. There is no separation of the fuel oil under contract from that not under contract, all being of the same grade. At the time the shipment of the fuel oil is made from the point of origin, plaintiff can not say where any particular cargo of same, or any part thereof, will go after it has been pumped into the storage tanks, to whom it will go, nor when it will be shipped out from the storage tanks. At the time of shipment from the point of origin, the only destinations which can be given are Port Tampa and Jacksonville, respectively.

The defendant company has nothing to do with the boat movement of the products used by the plaintiff in its Florida business. There is no through rate and no joint arrangement of any character between the water carrier and the defendant. Movement by boat, while interstate commerce, is not subject to regulation by the Interstate Commerce Commission. From two to four boats per month, with an average capacity of 45,000 barrels each, discharge their cargoes in plaintiff's storage facilities at Port Tampa and Jacksonville each month. A boat requires from one to three days to discharge its cargo, and while boats are engaged in discharging their cargoes into the storage tanks of plaintiff, tank cars are being loaded from the same storage tanks, for the purpose of supplying plaintiff's bulk stations, service stations and customers.

Plaintiff has been conducting its business in the manner here stated for many years, and it was not adopted for the purpose of evading the payment of interstate rates. That is merely the fixed, settled course of conducting its business. No question of bad faith on its part is suggested by the record. Its business could not be conducted without the storage facilities herein described, and until June 15, 1923, all shipments by the plaintiff from Port Tampa, Tampa and Jacksonville over defendant's lines to other points in Florida, over purely intrastate routes, were accepted by the defendant as intrastate commerce. Since June 15, 1923, the defendant has classified these shipments as interstate commerce, and collected freight on the basis of interstate rates.

In determining whether or not a particular movement is interstate or intrastate, the Court must look to the essential nature of the movement, and not merely to its accidents nor its isolated incidents. The question is not determined by the character of billing, the mere form of contract between [fol. 35] carrier and shipper, the continuity of movement or lack thereof; by whether the shipment has been in the continuous possession of the carrier, or by whether the bulk has or has not been broken. Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498; Ohio Railroad Commission v. Worthington, 225 U. S. 101; Texas & New Orleans R. R. Co. v. Sabine Tram Co., 227 U. S. 111; Railroad Commission of Louisiana v. Texas & Pacific Railway Co., 229 U. S. 336; Baer Bros. Mercantile Co. v. Denver & Rio Grande R. R. Co., 233 U. S. 479; B. & O. and S. W. R. R. Co. v. Settle, 260 U. S. 166; Missouri v. Kansas Gas Co., 265 U. S. 298.

Where the question, as is the case here, is whether an admittedly interstate movement ends at a given point, a vital element is the intent at the time the shipment is made of the person having control of the shipment and its future movement after its arrival at the point in dispute, and the intent is not that which he forms after the initial movement has begun, nor after the arrival of the shipment at the given point, but the question is, what was his real intent at the time the initial movement began. If, at that time, his real purpose was that the movement should definitely and in good faith end at the given point, and that any future movements of the shipment from that point should be as the result of a new and independent arrangement in good faith made, then all the authorities seem to agree that the character of the second movement is in no sense colored by the first movement, nor it is considered a part thereof.

Measured by this rule, it seems to the Court that the interstate journey of the gasoline, refined oil and fuel oil involved in this case, ends upon the delivery of those products into plaintiff's storage tanks at Port Tampa and Jacksonville, respectively; and that the interstate journey of the lubricating oil, if it does not end upon the delivery of same into the tank cars into which it is pumped at Port Tampa and Jacksonville, certainly ends when those tank cars have delivered their contents into the storage tanks

at Tampa and Kings Road, maintained by the plaintiff for the storage of lubricating oil. There is no question in this case of bad faith on the part of the plaintiff in having its purchases delivered to it at Port Tampa and Jacksonville. It does not for the purpose of ostensibly, but not in good faith, ending an interstate movement in order to get the benefit of a lower intrastate rate on subsequent movements of the product. This fact distinguishes this case from that of B. & O. and S. W. R. R. Co. v. Settle, supra. In that case it was admitted that the sole purpose of billing [fol. 36] the product from the mill in the South to Oakley, Ohio, and from there rebilling it to Madison, Ohio, at the local rate, was to get the advantage of a cheaper rate by thus combining an interstate rate with an intrastate one, notwithstanding the admitted fact that at the time the initial movement began, the real destination intended was Madison, rather than Oakley. The movement was essentially national in its character, and to have permitted such an admitted subterfuge to defeat national control would have opened the door to all kinds of evasions and unlawful preferences.

In the case at bar the movement from storage to other points in Florida is essentially local in character. The stoppage is not to defeat a through rate—there is none. It is not merely a halting for convenience of carriage. While as a practical matter it is necessary upon arrival at the port to place the cargoes in storage before they can be loaded into cars and carried to the various points of ultimate destination, the plaintiff has another and as equally important purpose in so handling the cargoes, viz., convenient and economical handling and distribution of its products. In the absence of bad faith, it is submitted that the fortuitous circumstance that the manner in which plaintiff handles its products upon delivery to it is also a convenient means of changing from water transportation to rail transportation, should not be made the basis of impressing upon a purely local intrastate movement a national character.

It is argued that plaintiff knows before any of the products start from the point of origin that they will not be disposed of at points where they are unloaded from boats, but they will ultimately move further into the interior of Flor-

ida, and that therefore the original movement, interstate in character, can not be said to have ended until ultimate destination has been arrived at. This contention overlooks the right of a shipper in good faith and for the convenience of his business to gather in interstate commerce the articles in which he deals, at distributing points, and thereafter, as the demands of his business arise, ship the articles so gathered in an entirely separate and distinct movement from the original one, even though the bulk of the article is not broken, the continuity of the journey not perceptibly interrupted, nor the articles transferred from the original means of carriage. Chicago, Milwaukee & St. Paul R. R. Co. v. Iowa, 233 U. S. 334. If a shipper did not have this right, then no jobbing concern, gathering its arti- [fol. 37] cles by interstate commerce into its central warehouse, could ship these articles from the warehouse in the regular course of business to other points in the same State as the warehouse at intrastate rates. Yet, such is the common practice, and recognized by Mr. Justice Brandeis in the case of B. & O. and S. W. R. R. Co. v. Settle, supra, as entirely proper and legitimate. In that case, in discussing this recognized practice, the Court said:

"The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if applicable tariffs do not confer reconsignment or transit privileges. The distinction is clear between cases of that character and the one at bar, where the essential nature of the traffic as a through movement to the point of ultimate destination is shown by the original and persisting intention of the shippers which was carried out."

It is suggested by the defendant, however, that the storage tanks at Fort Tampa and Jacksonville, and at Tampa and Kings Road, can not be considered distributing points, because in the main, distribution to the consumers is not made from these points, but from plaintiff's bulk stations and service stations. It seems to the Court that this distinction is a hypertechnical one, and no authority is cited to sustain the contention that points of distribution,

from which local shipments free of interstate character may be made, must be points from which distribution directly to the consumers is made. It seems to the Court that distribution from these storage tanks to other places of business of the plaintiff in the State of Florida, as the needs of its business demand, where the particular movement was not definitely intended and in mind at the time the original interstate movement commenced, is as much local in its character as if the second movement had been directly to the consumer.

Furthermore, the contention of the defendant, that the movement from the storage tanks to the bulk stations and service stations is not a local distributing movement entitled to take the intrastate rate, is not altogether consistent with its further contention, that the movement of fuel oil from the storage tanks directly to the consumer must take [fol. 38] the interstate rate. The defendant would avoid this seeming inconsistency, however, by the manner in which plaintiff's fuel oil business is conducted. It is argued that inasmuch as this fuel oil is contracted in large part to consumers before it is shipped from Tampico, and the points of delivery to consumers is known to the plaintiff at the time of the beginning of the initial movement, the interstate journey can not be considered ended until it has been delivered to the consumer; and in support of this contention it largely relies upon the cases of Texas & New Orleans R. R. Co. v. Sabine Tram Co., 227 U. S. 111, and Railroad Commission of Ohio v. Worthington, Receiver, &c., 225 U. S. 101. In this contention defendant apparently loses sight of the fact that at the time the movement from Tampico starts, it is plaintiff's definite intention to end the interstate journey at Port Tampa and Jacksonville—not for the purpose of avoiding the interstate rate, nor for convenience of carriage alone, but for fixed and definite business purposes, viz., for storage and safe keeping until time of delivery arrives. In determining the essential character of the movement it is important also to remember that notwithstanding the fact that this product is sold before it starts from Tampico, no particular part of the cargo is destined or intended for any particular purchaser, nor for delivery at any particular place beyond the ports, at any particular time; and while it is true that all of the oil is of

the same grade, yet, when the time comes to make delivery to the contract purchasers, a separation from stock is just as essential as in the case of a hardware merchant, who must select from a stock of shovels exactly alike, the shovels he has sold to a retail merchant.

Much is made of the alleged practically continuous flow of oil from ship to storage tanks, from storage tanks to tank cars and thence to the bulk stations and consumers, and the movement is painted as a continuous flow of oil in interstate commerce through the tanks to ultimate destination. Conceding the premise, we are again reminded that continuity of movement is not the test in determining the character of the movement. On this particular contention of the defendant the case of Public Utilities Commission of Kansas v. Landon, 249 U. S. 236, is illuminating. In that case the Court held that while piping natural gas from one State to another, and there delivering it to independent local gas companies, is interstate commerce, the movement of the gas by local companies from the point where they [fol. 39] receive it from the pipe line company to their local consumers is intrastate commerce, and not a continuation of the interstate movement, even though the mains of the local companies are permanently connected with those of the pipe line company, and there is no interruption of the flow of the gas from the pipe lines to the mains of the local companies.

The two cases above referred to, and relied upon so strongly by the defendant, do not seem to the Court to be in point.

In the Sabine Tram case the question was, whether or not the shipment of lumber from the mills where it was manufactured at Ruliff, Texas, to Powell & Company, the purchasers, at Sabine, Texas, on the Gulf of Mexico, was an interstate shipment or an intrastate shipment. There, as in every other such case, the question was, what was the essential character of the movement from Ruliff to Sabine, and it became important to know what the intention of Powell & Company was at the time the shipment left Ruliff. The undisputed facts were that Powell & Company was engaged in the purchase of lumber for export to Europe, by way of the port of Sabine; that contracts had been made for the sale of the lumber before the logs out

of which it was manufactured had left the State of Louisiana for the mill at Ruliff, Texas, and before Powell & Company had purchased the lumber from the Sabine Tram Company, it being purchased expressly for export to fill the contracts. Powell & Company had chartered ships to receive the lumber at Sabine, upon its delivery there, before any great part of the lumber had been delivered. At the time it was shipped from the mill it was Powell & Company's intention to have it loaded promptly upon the ships for carriage to Europe. Powell & Company, as had been its intention from the start, claimed for the shipments when they arrived at Sabine the free time allowed for unloading cars carrying freight intended for export, and after the lumber had been unloaded on the railroad company's premises, and before its transfer to the ships, freedom from storage allowed on export shipments. Powell & Company at all times regarded the shipments as export shipments, and viewed the stoppage at Sabine as a necessary incident in transferring the shipments from rail to water carriage. In view of these uncontroverted facts, the Court, of course, came to the conclusion that the movement from Ruliff to Sabine was a part of a continuous foreign movement, and that such was the intention of Powell & Company, who had control of the shipment after its arrival at Sabine, from the very time the initial movement started. It would seem [fol. 40] that the recitation of these facts so clearly distinguishes the Sabine Tram case from the case at bar as to make further comment unnecessary.

In the case of Railroad Commission of Ohio v. Worthington, Receiver, &c., supra, the question was whether or not the Railroad Commission of Ohio had the right to fix the rate at which coal should be carried from certain mining districts in the State of Ohio to the ports of Huron and Cleveland, Ohio, on Lake Erie, for carriage from those points by vessels furnished by the coal operators to points in other States, the rate covering not only the service of carriage from the coal field to the lake ports, but the further service of unloading the coal from the railroad cars into the vessels, and so distributing it in the holds of the vessels as to balance the cargo so that the vessels might proceed safely. The Court stated the question involved in the following language:

"Does the transportation which the rate prescribed by the Railroad Commission of Ohio covers constitute interstate commerce?"

It was held that the actual placing of the coal in the vessel (and the distribution of it in the hold of the vessel), in cases where the cargo was intended for carriage outside of the State of Ohio, were acts connected with, and a part of the interstate movement of the cargo, and that the attempt of the Railroad Commission of Ohio to regulate this charge was an interference with, and burden upon interstate commerce.

In the case at bar, as has been pointed out, the local movements from plaintiff's storage facilities to other points in Florida are not the preconceived parts of the interstate movements beginning at the refineries and at Tampico, but are separate and distinct movements, arranged for and commenced after the termination of the intrastate movements.

Numerous other cases are thought by plaintiff and defendant to be applicable to the case at bar, but in each of those cases, except the cases of Atlantic Coast Line R. R. Co. v. Standard Oil Co. of New Jersey and Seaboard Air Line Ry. Co. v. Standard Oil Co. of New Jersey, heard and decided together by the Circuit Court of Appeals for the Fourth Circuit on April 14, 1926, and which were decided in accordance with the views herein expressed, the facts were essentially different from those in the case at bar, and [fol. 41] therefore no useful purpose will be served in reviewing them at length.

For the reason stated, the Court is of opinion that the movements in question in this case are intrastate movements and should take the intrastate rates.

Inasmuch as the parties have indicated that the question of accounting probably can be agreed upon, the appointment of a Special Master to state the account between the parties will be left open, and the entry of a decree conforming to the views herein expressed will be held open pending such agreement, or notice that agreement can not be arrived at.

Chas. I. Dawson, Judge.

June 10, 1926.

Chas. G. Middleton, Humphrey, Crawford & Middleton, of Louisville, Ky., Attorneys for Plaintiff.

Helm Bruce, Bruce & Bullitt, of Louisville, Ky.; Thos. W. Davis, of Wilmington, N. C., Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—June 25, 1926

This cause coming on to be heard upon the pleadings and evidence introduced by affidavit and orally and having been heard and submitted in chief, and the Court being duly advised having delivered and filed herein as part of the record herein a written opinion expressing its views, and the Court being of the opinion that the complainant is entitled to the relief prayed for in its bill, it is hereby ordered, decreed and adjudged as follows;

[fol. 42] 1. That the defendant Atlantic Coast Line Railroad Company, its officers, agents, servants and employes, be and they hereby are perpetually enjoined from charging the complainant or imposing upon it for the transportation of its products or any of them between Port Tampa, Tampa and Jacksonville, all in the State of Florida, to other points within the said State of Florida over routes lying wholly within the said State rates other than or higher than its lawfully published rates for the transportation of such products in intrastate commerce within the State of Florida.

2. That the complainant, Standard Oil Company, recover from the defendant, Atlantic Coast Line Railroad Company, any and all such sums of money as the defendant has collected and received from the complainant or on its behalf in excess of said lawfully established rates or charges for intrastate transportation of said products or commodities over the lines of the defendant within the State of Florida, together with interest on such sums at the rate of six per cent per annum computed from the first day of the calendar month immediately following the month in which such excess charges were paid by or on behalf of said complainant to said defendant.

3. It is further ordered, adjudged and decreed that the complainant and the defendant herein be given sixty days in which to agree upon the correct amount of said excess charges, and that, if the complainant and defendant shall fail or be unable to agree upon the amount within said sixty days, then the Court will hereafter order that the cause be referred to a Special Master for the sole and only purpose of ascertaining the correct amount of said excess charges imposed upon the complainant and paid by it or on its behalf.

5. That the complainant recover of the defendant the costs of this action to be taxed by the Clerk of this Court.

6. Subject to the possible necessity for reference as before mentioned to ascertain the amount due complainant, this shall be considered the final decree herein.

Chas. I. Dawson, Judge.

June 25, 1926.

[fol. 43] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—June 25, 1926

This day came the parties hereto and defendant, The Atlantic Coast Line Railroad Company, in open Court, prayed an appeal to the United States Circuit Court of Appeals for the Sixth Circuit from the decree entered herein on the 25th day of June, 1926, and at the same time filed its assignment of errors upon which said appeal is based, which appeal is hereby allowed. Plaintiff, The Standard Oil Company of Kentucky, waived the issue of citation and entered its appearance to said appeal.

Said defendant also moved the Court to suspend the operation and execution of said decree pending the appeal from it, which motion the Court sustained, and it is, therefore, ordered that the operation and execution of said decree be, and it is, suspended pending said appeal and until the determination thereof.

The amount of the appeal bond is fixed at the sum of $500.00. Whereupon said defendant produced and filed an appeal bond in the form provided for such cases in the sum of $500.00, with Fidelity & Deposit Company of Maryland

as surety thereon, which bond was approved and so endorsed and filed.

Chas. I. Dawson, Judge.

June 25, 1926.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed June 25, 1926

Defendant, Atlantic Coast Line Railroad Company, assigns as errors of the Court in the above styled cause the following, to wit:

1. In holding that plaintiff has no adequate remedy at law for the alleged injuries complained of in its bill of complaint, and, therefore, that equity has jurisdiction of the cause.

[fol. 44] 2. In holding that the commerce described in plaintiff's bill, to wit, transportation of plaintiffs's products between Port Tampa, Tampa and Jacksonville in the state rates upon the products or commodities of plaintiff upon which were charged and collected the rates complained of, was and is intrastate commerce, upon which, therefore, the intrastate rates fixed by the Florida Railroad Commission should have been charged, and in enjoining the Atlantic Coast Line Railroad Company from charging its law fully published interstate rates upon such commerce.

3. In decreeing that the defendant, Atlantic Coast Line Railroad Company, shall pay to the plaintiff, Standard Oil Company, such sums of money as have been collected and received by defendant from plaintiff in excess of the intrastate rates upon the products or commodities of plaintiff transported over defendant's lines within the State of Florida.

4. In decreeing that interest be paid by defendant to plaintiff upon the excess charged and received by defendant from plaintiff for the transportation of said commodities over and above the intrastate rates for transportation of same.

5. In decreeing that plaintiff recover of defendant plaintiff's costs herein expended.

6. In refusing to dismiss the bill of complaint.

Wherefore, defendant, Atlantic Coast Line Railroad Company, prays that the decree aforesaid be reversed.

Thos. W. Davis, Bruce & Bullitt, Counsel for Defendant.

[fol. 45] Bond on appeal for $500.00, approved and filed June 25, 1926, omitted in printing.

[fol. 46] In United States District Court

Order Filing and Approving Statement of Evidence—July 8, 1926

This day came defendant and filed its Statement of Evidence under Equity Rule No. 75, and plaintiff having been notified of the presentation of this to the Court, and having stated that it has no objection to the same, the said statement was approved by the Court and filed.

Bruce & Bullitt, Attys. for Deft.

Enter July 8, 1926.

O. K. Chas. G. Middleton, Solicitor for Complainant.

In United States District Court

Statement of Evidence—Filed July 8, 1926

Upon the trial of this cause on April 7, 1926, before the Court, the following evidence was introduced:

W. G. Violet

W. G. Violet, introduced by plaintiff, testified as follows:

My name is W. G. Violet. I am Vice-President of the Standard Oil Company of Kentucky and have been such

since 1904. I am familiar with the Company's methods of handling its business in the State of Florida. The Standard Oil Company of Kentucky does not own any production of oil. It purchases its supply on the open market.

It purchases its fuel oil from the Standard Oil Company of New Jersey.

Most of its gasoline, refined oil, lubricating oil, gas oil and light oil is purchased from the Standard Oil Company of Louisiana. But it makes some few purchases of these [fol. 47] commodities from other Companies, such as the Vacuum Oil Company, from which it purchases Mobile oils.

Plaintiff receives its refined oil, gasoline and fuel oil largely by boat-load shipments into the port of Tampa, Florida, and St. Johns River Terminals at Jacksonville, Florida, at which two places it has large storage tanks.

Referring to the gasoline, refined oil and lubricating oil which is received in the Company's tanks at Port Tampa, we receive at the Home Office in Louisville, Kentucky, weekly inventories from our Jacksonville manager, showing the stock in our storage tanks at Port Tampa. From the information given on these inventories, we calculate, as best we can, if and when we should order different supplies based upon the best calculation we can make as to our future requirements, and especially market conditions, whether or not the general market conditions at primary points would indicate that it was advisable to increase our stock or decrease our stock. These orders are placed with the Standard Oil Company of Louisiana by our office, designating the approximate time when the delivery should be made. They acknowledge receipt of that order. The shipment is made. Upon arrival of the boat at Port Tampa, it is pumped by the ship pump through pipe lines into our storage.

I do not know whether the ships just referred to are the property of the Standard Oil Company of Louisiana or not. They are probably chartered. We have nothing to do with that. The goods don't become our property until pumped.

Counsel for defendant here objected that the witness was simply stating the law, and the Court instructed the witness just to tell what was done. Whereupon it was suggested that plaintiff has a contract with the Standard Oil Com-

pany of Louisiana, to which the witness answered, "We have the contract of invoice."

At this point the following occurred:

"By Mr. Bruce, counsel for defendant: Mr. Violet said the title did not pass. We object to that statement. It may hereafter become material and I think that question should be determined by the contract between the parties.

"Witness: We have no contract covering purchases of refined oil or gasoline.

"By Mr. Middleton: Just tell how they are handled."

[fol. 48] The witness then proceeded:

"Those are purchased on the open market and the price we pay is the current market in effect at the time those goods are unloaded into our storage tanks at Port Tampa. Each shipment is a separate contract. The quantity loaded on the ship at the refinery has nothing to do with the quantity which we pay for. There is no written contract between the Standard Oil Company of Kentucky and the Standard Oil Company of Louisiana covering a year's supply of gasoline."

A typical case of how an order by plaintiff to the Standard Oil Company of Louisiana is given and handled when plaintiff needs a carload of gasoline is shown by the following correspondence:

"December 23, 1924.

Mr. J. A. Moffett, Jr., 26 Broadway, New York City.

Dear Sir: I am attaching our order No. 25260 for second cargo in January to be delivered by the S-S Polarine to Jacksonville, Fla.

Attached also is order No. 25259 for loading of the S-S Waring at Baton Rouge about Jan. 13th for Port Tampa, Fla.

Will appreciate your acknowledging receipt of both of these orders.

Yours truly."

There is nothing in the order about price. The order says:

"50,000 bbls. (50s) Motor Gasoline, Florida Test
200 bbls. (50s) Polarine Medium
200 bbls. (50s) Polarine Heavy
6,000 bbls. (50s) Gas Oil—purchase No. 48
1,500 bbls. (42s) 20-22 Fuel Oil—purchase No. 43."

That letter and order are acknowledged on December 26th, as follows:

[fol. 49] "December 26th, 1924.

Mr. S. W. Coons, President Standard Oil Co. of Kentucky, Louisville, Kentucky.

DEAR SIR: I beg to acknowledge with thanks your letter of December 23rd enclosing the following orders:

No. 25259 for loading the s-s "O. T. Waring" at Baton Rouge about January 13th for discharge at Port Tampa, Fla., as follows:

50,000	bbls.	(50s) Motor Gasoline, Florida Test
200	"	" Polarine Medium
200	"	" Polarine Heavy
6,000	"	" Gas Oil—Purchase No. 48
1,500	"	(42s) 20-22 Fuel Oil—purchase No. 43.

No. 25260 for loading the s-s "Polarine" at Baton Rouge about January 25th for discharge at Jacksonville, Fla., as follows:

40,000 bbls. (50s) Motor Gasoline, Florida Test.

I am wiring these orders to the Refinery today.

Yours very truly, J. A. Moffett."

(Tr. of Evidence 7.)

The refinery is located at Baton Rouge, Louisiana.

The gasoline that appears on the invoice is loaded on the boat at Baton Rouge and they mail us a memoradum invoice indicating simply by their records, as I understand it, the quantities loaded.

The boat arrives at Port Tampa. Before it starts to discharge, a representative of the Standard Oil Company

of Kentucky and a representative of the Standard Oil Company of Louisiana check the measurements in the storage tanks. Then when the boat is discharged, they again check the measurements and the difference between these two measurements of the gasoline in our tanks at Port Tampa signed by both our representatives and the representative of the seller constitute the basis for invoice.

The Standard Oil Company of Kentucky pays on the quantity that is pumped into our tanks at Port Tampa, as this invoice shows. This invoice shows what their records [fol. 50] are as regards the quantity loaded at Baton Rouge and right under that it says "should be" and these revised quantities check with the quantities that we and their representatives agree were unloaded from the boat. In other words, the representatives of the two Companies, when the stuff is pumped into the tanks at Port Tampa, give the two Companies information with which to correct the original invoice. This out-turn of cargo is signed by our representative and the representative of the Standard Oil Company of Louisiana.

The price is the current market in effect after the cargo is discharged. I am talking about refined oil and gasoline.

In other words, we order a cargo May 1st and it leaves Baton Rouge May 15th, but is not pumped into the Port Tampa tanks until May 20th. May 20th governs the price, because the gasoline does not belong to us until it is pumped into the tank at Port Tampa.

Counsel for defendant here objected to the statement as to the passage of title, to which counsel for plaintiff responded, "There is no written contract."

Here the witness started to state what the understanding of the parties is as to when the goods became the property of the plaintiff, to which counsel for defendant objected, and the following question was asked by the Court:

"By the Court: Your contract was that this stuff was to be delivered to your Company in the tank at Port Tampa and Jacksonville respectively?

"By the Witness: Yes, sir; and those invoices show that."

The witness then proceeded:

I do not know whether the cargo from Baton Rouge to Port Tampa or Jacksonville is insured or not. We do not insure it.

I do not know anything about the chartering or the owning of the boat which carries the goods.

The witness here filed as Exhibit No. 2 an invoice of December 31, 1925 which is as follows:

[fol. 51] PLAINTIFF'S EXHIBIT No. 2

Standard Oil Company of Louisiana, General Office

Standard Oil Company, Inc., Louisville, Ky., for Account of State of ——, Baton Rouge, La., December 31*th*, 1925

Order Date: —— —, ——.

Item No.	Order: B. R.	Order: Station	Order: Sales	Date shipped	Consigned and destination	Product	Freight	Amount
					Brought Forward		3,579.76	3,238,193.93
1					We today charge your account adjusting Gallonage on Cargo delivered to the S/S "O. T. Waring" at Refinery Docks Dec. 19 & 20, 1925 for discharge at Jacksonville, Fla. and covered by our Invoice #89, Item #2, dated 12/21/25, as follows: Also charging Fuel Oil delivered.			

As billed:

	@ 65°			
Deodorized Gasoline	2,204,479	.11	$242,492.69	
	@ 60°			
Gas Oil	231,792	.045	10,430.64	
Atlantic Red Engine	15,034	.105	1,578.57	
Polarine Oil Medium	74,944	.245	18,361.28	
Polarine Oil Heavy	49,925	.245	12,231.63	
Polarine Oil Heavy X	50,056	.325	16,268.20	
# Fuel Oil	.....	.....	.....	
				$301,363.01

Should be:

	@ 65°		
Deodorized Gasoline	2,201,793	.11	$242,197.23
	@ 60°		
Gas Oil	229,511	.045	10,328.00
Atlantic Red Engine Oil	14,683	.105	1,541.72
Polarine Oil Medium	75,270	.245	18,441.15

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PLAINTIFF'S EXHIBIT No. 2—Continued

Item No.	Order B. R.	Order Station	Order Sales	Date shipped	Consigned and destination			Product	Freight	Amount
Polarine Oil Heavy					48,838	.245	11,965.31			
Polarine Oil Heavy X					49,315	.325	16,027.38			
♯ Fuel Oil					36,770	.038333	1,409.50			
								$301,910.29		547.28
									3,579.76	3,238,741.21

Mr. Saul:

Jany. 4/26.

Please bill as of December 1925, the following cargo, as discharged by S. S. O. T. Waring, at Jacksonville, Fla.—December 25, 26/25. Invoice for S. O. Co. of La. to be received later.

2202152—gals. Gasoline
37388— " Light Gravity Fuel Oil.
229891— " Gas Oil.
48838— " Polarine Oil Heavy.
75651— " " Medium.
49315— " " Heavy X.
14744— " " Atlantic Red

Inv. No. 198.
Jan. 4, 1926.
Sta. Jacksonville.

♯ To apply on Purchase ♯71.

[fol. 52] The Company purchases its crude oil from the Standard Oil Company of New Jersey, which in turn gets its crude oil in Mexico. There is a written contract covering the purchase of fuel oil, and I file it herewith marked "Plaintiff's Exhibit No. 3." It is as follows:

PLAINTIFF'S EXHIBIT No. 3

An Agreement made this 25th day of October, 1924, between the Standard Oil Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the Seller, and the Standard Oil Company, a corporation organized under the laws of the State of Kentucky, hereinafter called the Buyer, whereby it is agreed as follows:

Quantity

1. Seller agrees to sell and deliver at Port Tampa, Key West, or Jacksonville, Buyer's option, and Buyer agrees to purchase and receive one million (1,000,000) Barrels, 10% more or less, Buyer's option of 42 U. S. Standard gallons each at sixty degreed (60°) Fahrenheit of oil as per specifications given in Article 5.

Delivery

2. Deliveries to be made in cargo lots over a period of one year from January 1, 1925, in fairly even monthly quantities.

Price

3. Price to be paid to the Seller One Dollar Twenty Nine Cents ($1.29) U. S. Gold per barrel of 42 U. S. Standard gallons, c. i. f. Port Tampa or Key West, Fla., and One Dollar Thirty-Five Cents ($1.35) U. S. Gold per barrel of 42 U. S. standard gallons c. i. f. Jacksonville, Florida, plus any taxes payable to the Mexican Government on the oil delivered hereunder in excess of the equivalent of Nineteen Cents (19¢) U. S. Gold per barrel of 42 U. S. Standard gallons. Should the aforementioned taxes be less than Nineteen (19¢) Cents U. S. Gold per barrel of 42 U. S. standard gallons, the price for deliveries hereunder to be reduced by the amount by which such taxes are less than

19¢ per barrel. Payment to be made on the basis of the quantity loaded at loading port as ascertained by Messrs. Charles Martin & Co.'s representative.

[fol. 53] Payment

4. Payment for all oil delivered in each month shall be made not later than the fifteenth of the succeeding month, such payment to be made in New York funds or exchange to the credit of the Seller at its office in New York.

Specifications, Tests and Inspection Certificates

5. The oil shall be Mexican Crude Oil of a gravity not heavier than eleven and five tenth degrees (11.5°) A. P. I at sixty degrees (60°) Fahrenheit. If the oil tendered for delivery by the Seller shall contain more than three per-cent (3%) in volume of water and/or foreign matter, Buyer shall not be required to accept the same. All measurements of quantities and test for the quality of the oil and for water and/or foreign matter contained therein shall be made at Buyer's expense by a representative of Messrs. Chas. Martin & Co., Oil Inspectors, appointed by the New York Produce Exchange and shall be made in the shore tanks at the port of loading, before loading is begun. Such inspector shall issue a certificate both as to quantity and quality of the oil delivered and as to the amount of water and/or foreign matter contained therein, which certificate shall be accepted by both parties as conclusive evidence of the quantity and quality of the oil delivered and of the water and/or foreign matter contained therein.

No deduction in the volume of oil to be paid for shall be made for water and/or foreign matter contained therein unless the amount of same shall exceed one per cent (1%) in which latter event deduction shall be made for any excess over one per cent (1%).

The net quantity of the oil delivered shall be determined on the basis of volume of sixty degrees (60°) Fahrenheit.

An adjustment for variation in volume due to difference in temperature above or below the standard of sixty degrees (60°) Fahrenheit shall be made by a deduction of .035% (35/1000 of 1%) for each degree above sixty degrees (60°) Fahrenheit, or by any addition of .035%

(35/1000 of 1%) of each degree below sixty degrees (60°) Fahrenheit.

[fol. 54] The oil shall be tested by taking three (3) pint samples from each of the tanks from which the oil is to be delivered, one pint from the top third, one pint from the middle third, and one pint from the bottom third of the oil contained in the tank; this after the water has been drawn from the tank down to a point where water will not enter the suction line while delivery is being made. These three (3) pint samples shall be thoroughly mixed and then a sample taken therefrom shall be tested. The water and/or foreign matter shall then be determined by Method No. 300.3 Bureau of Mines Technical Paper No. 323, pages 67/69.

Demurrage, etc.

Demurrage incurred in the discharge of steamers making delivery of the oil hereby sold, shall be at the rates of and in the manner specified in the "revised dispatch and demurrage schedule for tank steamers owned and/or operated by the Standard Oil Company (N. J.)" effective March 15, 1924, which said revised schedule is annexed hereto and hereby made a part of this contract as if set forth in full herein.

Buyer guarantees to provide a safe berth for steamers to discharge at Port Tampa, Key West or Jacksonville where there will not be less than Twenty-four (24) feet of water in berths, and approaching it, and where the steamers can lie alongside, discharge there always afloat and always leave without any undue risk, said berth to be available immediately after vessel reports ready to discharge.

If the Buyer is able to provide a safe berth for steamers to discharge at Jacksonville where there will be not less than 26 feet of water in depth approaching it and where the steamers can lie along side, discharge there, always afloat and always leave without any undue risk and the Buyer will receive cargo lots of at least 60,000 bbls., then the price for deliveries at Jacksonville shall be reduced to 3¢ per bbl.

[fol. 55] Force Majeure

If the fulfillment of any of the terms and provisions hereof shall be delayed or prevented by revolution or other

disorders, war, acts of enemies, strikes, lockouts, fires, floods, Acts of God, arrest or restrain of princes, rulers or peoples, perils of the sea, accidents of navigation, breakdown of or injury to ships, expropriation or confiscation of the properties which constitute Seller's facilities for receiving, producing, manufacturing, handling, transporting or delivering oil hereunder, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interferred with and which by the exercise of reasonable diligence said party is unable to prevent, whether of the class of causes hereinbefore enumerated or not, no liability for damage shall arise against said party on account of such delay or prevention.

Delivery by the Seller of the quantity sold hereunder is dependent upon and coincident with the daily production of the wells of the Compania Transcontinental de Petroleo, S. A. producing in the Panuco and Cacalilac fields being at the rate of 60,000 barrels or over of oil of the quality sold hereunder and likewise upon the Seller receiving from the International Petroleum Company a minimum daily quantity of 30,000 barrels of this grade of Crude.

If for any day during the continuance of this contract the production of the aforementioned wells falls below 60,000 barrels per day or the Seller fails to receive from the International Petroleum Company 30,000 barrels per day, the Seller but not the Buyer shall have the option to reduce the quantity contracted to be sold under this contract by an amount calculated on the same proportional basis as the amount of production obtained plus the oil received from the International bears to 90,000 barrels and such proportionate reduction in the deliveries shall at Seller's option fix the total quantity deliverable hereunder at the resultant decreased amount.

[fol. 56] In Witness Whereof the parties hereto have caused these presents to be duly executed in duplicate the day and year first above written.

Standard Oil Company (New Jersey), by A. C. Bidford, Chairman of the Board. Standard Oil Company (Kentucky), by W. E. Smith, Vice President.

Attest: M. H. Eames, Asst. Secretary. (Seal.)

The initials "C. I. F." stand for Cost, Insurance and Freight.

The capacity of storage tanks at Port Tampa for refined oil, gasoline and fuel oil is approximately 250,000 barrels, divided as follows:

Refined oil 2 tanks total	19,635 bbls.
Gasoline 5 storage tanks total capacity	104,505 bbls.
Fuel oil, all grades, total 7 storage tanks	125,829 bbls.

Refined oil and gasoline are figured at 50 gallons to the barrel. Fuel oil at 42 gallons to the barrel. That is the usage in the oil industry.

At St. Johns River Terminal, Jacksonville, we have storage tanks of the following capacities:

Refined oil 2 storage tanks totalling	40,600 bbls.
Gasoline 5 storage tanks totalling	162,500 bbls.
Lubricating oil 5 storage tanks	20,811 bbls.
Fuel Oil, all grades, totalling 7 storage tanks	145,900 bbls.
Total approximately	369,100 bbls.

The capacity of the average steamer that serves these ports is approximately 45,000 barrels, but they vary.

The total tank capacity at both ports, Jacksonville and Port Tampa, is approximately 619,000 barrels.

Our sales of refined oil at points supplied from Port Tampa for the first six months of 1925 average 8,600 barrels per month, and of gasoline approximately 48,700 barrels per month.

[fol. 57] Sales of refined oil for the same period at Florida points supplied from the St. Johns River Terminal at Jacksonville were approximately 8,500 barrels per month for refined oil and 44,400 barrels of gasoline.

Our average monthly sales of refined oil and gasoline from Port Tampa and Jacksonville for the first six months in 1925 were about 110,000 barrels.

The considerations which are important for the Company in determining the size of tankage capacity at a port are the physical conditions, prospective amount of business and a certain leaway that will enable us to increase

materially stocks under certain market conditions. We try to increase stock when we believe prices will advance. And when we think prices are going down, we allow stocks to run down. Our stocks vary at those ports. The following illustrations will explain our method:

In April, May and June 1925 markets on gasoline generally were advancing, and during that period we received at Port Tampa and Jacksonville approximately 408,600 barrels of gasoline. During the same three months we shipped out of those two terminal stations only 333,000 barrels of gasoline. It quite often happens that while conserving our stock, say of gasoline at Jacksonville tankage or Port Tampa tankage, purchases are made of a supply for certain places shipped but directly from refineries.

On the other hand, in July, August and September, 1925, the gasoline market at primary points, refinery centers, were being reduced. We received by boat at Port Tampa and Jacksonville during that period, July, August and September, 1925, approximately 210,200 barrels of gasoline, but we shipped out from those two terminal stations during the same three months approximately 400,000 barrels. The consequence of that was that on June 30th, on the 1st day of July, we had approximately 223,000 barrels of gasoline on hand at Port Tampa and Jacksonville, but at the end of September we only had 42,000 barrels.

It would not be possible for the Standard Oil Company of Kentucky to conduct its business with tanks at those two ports of sufficient size only to transfer cargoes from boat to rail. We use these tanks to take advantage of market conditions. In that way we make an inventory profit on the stuff we buy, and sometimes we make a loss.

Referring now to lubricating oil: It is received in cargoes along with refined oil and gasoline and pumped direct from the ship into tank cars for the reason that so far [fol. 58] we have no storage at Port Tampa for lubricating oil. After it is pumped into the tank cars, most of it is shipped to Tampa, Florida. It is sold in the general grades of business and hauled out by tank trucks, filled into barrels, and some is reloaded into tank cars at Tampa and shipped. The barreling at Tampa averages about 600 barrels per month.

Referring now to the same commodity at Jacksonville: We now have at the St. Johns River Terminals at Jack-

sonville a total of 5 storage tanks for lubricating oil. These lubricating oils come to Jacksonville in the same manner as to Tampa, but instead of being pumped into tank cars are pumped into storage tanks located on the St. Johns River Terminal and are there reloaded and sent to Jacksonville or other stations.

Kings Road station at Jacksonville is our marketing station for lubricating oil for Jacksonville and immediate vicinities. That is where we operate our trucks, have a warehouse and fill barrels, and the lubricating oil arriving at what we term the Kings Road plant is pumped from the tank cars into the storage tanks we have there the same as we have at Tampa, and it is then distributed to our customers by tank trucks or in barrels.

We do not do any barreling at St. Johns River Terminal. At Kings Road we barrel about 3,500 barrels of lubricating oil per month.

Lubricating oil is purchased under the same character of contract as gasoline at the primary points.

Referring to bulk stations: At bulk stations we have smaller storage tanks, garages and agents and certain facilities to sell it. We have 123 of these bulk marketing stations in Florida.

We have 165 drive-in service stations in Florida.

I estimate that we have approximately 5,000 gasoline dealers, to whom we deliver gasoline by tank wagons.

At this point the following examination and proceedings occurred:

"Q. Are all of those bulk stations and service stations and dealers supplied with those products from the two ports which you have described?

A. In a majority of cases.

Q. Where else do they get supplies?

A. Tank cars directly from refineries.

Q. Is that exceptional or not?

A. It depends on market conditions.

[fol. 59] Q. State the market conditions under which you would supply a customer with a tank car in Orlando, Florida or some other such point?

By Major Davis, counsel for defendant: I submit that has nothing to do with this case.

The Court: I don't see that either. The question is what rate this stuff should take from Port Tampa and Jacksonville.

Mr. Middleton, counsel for plaintiff: It has this bearing——

The Court (interrupting): It might throw light on the way they conduct their business.

Mr. Middleton: Yes.

The Court: I understand that he brings in tank cars from other points only when the market conditions justify them in conserving stock.

Mr. Middleton: That is correct, but it is true in a large measure that the bulk station and the service stations and the dealers are supplied through these two ports."

The witness then proceeded: Leaving out of consideration for the present fuel oil, we have no contracts for oil, with one or two exceptions, isolated cases, with our customers of refined oil or gasoline. Our customers are shifting. We are losing them and gaining them each day. We hold these products subject to the demands of our customers and business. The volume of business shifts with the seasons of the year and in the different departments. Take, for instance, refined oil. On our sales in Florida for the year 1925 in February we had a loss of practically 9% in our sales of refined oil (which is the same as coal oil), by which I mean that this was the percentage of loss over the same month for the previous year. In March, the following month, the loss was 3.7%. April came along with a gain of practically 10%. There was a gain in May of 10%. June came along with a gain of 27%. July comes along with a gain of about 15%. In other words, there is no regularity at all in our business.

On gasoline, March showed a gain of approximately 20%. April showed a gain of 19%. May showed a gain of 27%. June a gain of 26%. July a gain of 44%.

"By Major Davis: You don't call February there?

A. I didn't call February in either instance."

I have prepared a monthly inventory of the receipts of fire proof oil, which is refined oil, and gasoline for [fol. 60] 1925 at Port Tampa in 50 gallon barrels. The inventory shows monthly receipts and shipments. I will

call attention to a few months and then file the entire statement. On December 31, 1924 our inventory of refined oil at Port Tampa was 16,709 barrels. During January we received nothing, but we shipped out 8,780 barrels. On April 30th our inventory was 12,258 barrels. We received during the month of May 11,087 barrels and we shipped out only 7,773 barrels. All of these barrels were 50 gallon barrels.

I have the same information on all of the products and I file the statement for all the products, marked "Plaintiff's Exhibit No. 4."

In explanation of this statement, I may say that the statement refers to the consumption of fire proof oil. That is refined oil or kerosene. The "gas oil" is a light fuel oil and is handled the same way as gasoline and the other products. Crown gasoline is our trade name for gasoline. What is referred to in the statement as 20.22 gravity oil is a light fuel oil and gas oil is a lighter fuel oil. Heavy fuel oil is approximately 11. gravity.

The statement (Plaintiff's Exhibit No. 4) is as follows:

PLAINTIFF'S EXHIBIT 4

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline Year 1925, Port Tampa, Fla.

(All 50-gal. bbls.)

	Fire-proof oil	Crown gasoline
Inventory Dec. 31, 1924	16709 bbls.	75107 bbls.
Receipts month of Jan. 1925		45662 "
Available stock month of Jan. 1925	16709 bbls.	120769 bbls.
Shipments month of Jan. 1925	8780 "	58406 "
Inventory Jan. 31, 1925	7908 bbls.	62285 bbls.
Receipts month of Feb. 1925	9877 "	33892 "
Available stock month of Feb. 1925	17785 "	96177 "
Shipments month of Feb. 1925	8047 "	49948 "

	Fire-proof oil	Crown gasoline
[fol. 61] Inventory Feb. 28, 1925	8864 bbls.	46385 bbls.
Receipts month March 1925	10014 "	76015 "
Available stock month of March 1925	18878 "	122400 "
Shipments month of March, 1925	9184 "	50901 "
Inventory March 31, 1925	9748 bbls.	71347 bbls.
Receipts month of April 1925	10274 "	30835 "
Available stock month of April 1925	20022 "	102182 "
Shipments month of April 1925	7861 "	44826 "
Inventory April 30, 1925	12258 bbls.	57601 bbls.
Receipts month of May 1925	11087 "	69791 "
Available stock month of May 1925	23345 "	127392 "
Shipments month of May 1925	7773 "	44698 "
Inventory May 31, 1925	15680 bbls.	83268 bbls.
Receipts month of June 1925		42046 "
Available stock month of June 1925	15680 "	125314 "
Shipments month of June 1925	6970 "	50578 "
Inventory June 30, 1925	8736 bbls.	75317 bbls.
Receipts month of July 1925	5389 "	15693 "
Available stock month of July 1925	14125 "	91010 "
Shipments month of July 1925	7441 "	54719 "
Inventory July 31, 1925	6736 bbls.	36382 bbls.
Receipts month of August 1925	11069 "	74437 "
Available stock month of Aug. 1925	17805 "	110819 "
Shipments month of Aug. 1925	5606 "	49172 "
Inventory Aug. 31, 1925	12357 bbls.	62396 bbls.
Receipts month of Sept. 1925		

	Fire-proof oil	Crown gasoline
Available stock month of Sept. 1925	12357 "	62396 "
Shipments month of Sept. 1925	12210 "	50955 "
[fol. 62] Inventory Sept. 30, 1925	260 bbls.	11277 bbls.
Receipts month of Oct. 1925	22201 "	105652 "
Available stock month of Oct. 1925	22461 "	116929 "
Shipments month of Oct. 1925	8284 "	74141 "
Inventory Oct. 31, 1925	14551 bbls.	48471 bbls.
Receipts month of Nov. 1925	5611 "	81096 "
Available stock month of Nov. 1925	20162 "	129567 "
Shipments month of Nov. 1925	14231 "	78213 "
Inventory Nov. 30, 1925	5712 bbls.	46537 bbls.
Receipts month of Dec. 1925	14823 "	72149 "
Available stock month of Dec. 1925	20535 "	118686 "
Shipments month of Dec. 1925	16677 "	88862 "
Inventory Dec. 31, 1925	3890 bbls.	32735 bbls.

Tankage—Port Tampa plant:

# 3—	Oil	14,587 bbls.
#10—	"	5,048 "
	Total	19,635 "
# 7—	Gasoline	10,111 bbls.
# 9—	"	9,762 "
#12—	"	22,316 "
#13—	"	22,316 "
#14—	"	40,000 "
	Total	104,505 "

[fol. 63] Standard Oil Company (Ky.)

Monthly Inventory and Receipts Heavy Fuel Oil Year 1925, Port Tampa, Fla.

(All in 42-gallon Barrels)

Inventory, Dec. 31, 1924	58,837	bbls.
Receipts during month of January, 1925	98,912	"
Available Stocks for January, 1925	157,749	"
Shipments during month of Jan. 1925	73,603	"
	844,146	"
Inventory, Jan. 31, 1925	86,516	bbls.
Receipts during month of February, 1925	52,006	"
Available Stocks for February, 1925	138,522	"
Shipments during month of Feb. 1925	82,523	"
	55,999	"
Inventory, Feb. 28, 1925	57,353	bbls.
Receipts during month of March, 1925	97,583	"
Available Stocks for March, 1925	154,936	"
Shipments during month of March, 1925	80,598	"
	74,338	"
Inventory, March 31, 1925	76,410	bbls.
Receipts during month of April, 1925	97,383	"
Available Stocks for April, 1925	173,793	"
Shipments during month of April, 1925	70,708	"
	103,085	"
Inventory, April 30, 1925	105,084	bbls.
Receipts during month of May, 1925	44,729	"
Available Stocks for May, 1925	149,813	"
Shipments during month of May, 1925	73,888	"
	75,925	"

[fol. 64] Inventory, May 31, 1925	76,572	bbls.
Receipts during month of June, 1925	42,685	"
Available Stocks for June, 1925	119,257	"
Shipments during month of June, 1925	79,891	"
	39,366	"
Inventory, June 30, 1925	40,849	bbls.
Receipts during month of July, 1925	93,640	"
Available Stocks for July, 1925	134,489	"
Shipments during month of July, 1925	76,014	"
	58,475	"
Inventory, July 31, 1925	60,382	bbls.
Receipts during month of August, 1925	95,938	"
Available Stocks for August, 1925	156,320	"
Shipments during month of August, 1925	82,737	"
	73,583	"
Inventory, August 31, 1925	75,220	bbls.
Receipts during month of September, 1925	91,360	"
Available Stocks for Sept., 1925	166,580	"
Shipments during month of September, 1925	74,173	"
	92,407	"
Inventory, Sept. 30, 1925	94,370	bbls.
Receipts during month of October, 1925	47,199	"
Available Stocks for Oct., 1925	141,569	"
Shipments during month of Oct., 1925	88,203	"
	53,363	"

Inventory, Oct. 30, 1925	57,695 bbls.
Receipts during month of November, 1925	90,965 "
Available Stocks for November, 1925	148,660 "
Shipments during month of November, 1925	99,919 "
	48,741 "
[fol. 65] Inventory, November 30, 1925	47,836 bbls.
Receipts during month of December, 1925	95,401 "
Available Stocks for December, 1925	143,237 "
Shipments during month of December, 1925	109,365 "
	33,872 "

Standard Oil Company (Ky.)

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil Year 1925, Port Tampa, Fla.

(All in 50-gallon Barrels)

	Gas oil 20/22	Grvty. fuel
Inventory, Dec. 31, 1924	12,472 bbl.	4,312 bbl.
Receipts during month of January, 1925	5,932 "	1,459 "
Available Stocks for January, 1925	18,404 "	5,771 "
Shipments during month of January, 1925	8,675 "	2,604 "
	9,729 "	3,167 "
Inventory, January 31, 1925	9,646 bbl.	3,265 bbl.
Receipts during month of February, 1925	5,865 "	1,806 "
Available Stocks for February, 1925	15,511 "	5,071 "
Shipments during month of February, 1925	9,102 "	3,182 "
	6,409 "	1,889 "

	Gas oil 20/22	Grvty. fuel
Inventory, February 28, 1925	6,302 bbl.	2,038 bbl.
Receipts during month of March, 1925	12,270 "	3,817 "
Available Stocks for March, 1925	18,572 "	5,855 "
Shipments during month of March, 1925	8,979 "	3,691 "
	9,593 "	2,164 "
Inventory, March 31, 1925	9,548 bbl.	2,295 bbl.
Receipts during month of April, 1925	6,331 "	2,099 "
Available Stocks for April, 1925	15,879 "	4,394 "
Shipments during month of April, 1925	6,967 "	2,634 "
	8,912 "	1,760 "
[fol. 66] Inventory, April 30, 1925	8,905 bbl.	1,874 bbl.
Receipts during month of May, 1925	6,380 "	3,834 "
Available Stocks for May, 1925	15,285 "	5,708 "
Shipments during month of May, 1925	6,877 "	2,127 "
	8,408 "	3,581 "
Inventory, May 31, 1925	8,531 bbl.	3,638 bbl.
Receipts during month of June, 1925	6,224 "	1,620 bbl.
Available Stocks for June, 1925	14,755 "	5,258 "
Shipments during month of June, 1925	7,387 "	2,484 "
	7,368 "	2,774 "

	Gas oil 20/22	Grvty. fuel
Inventory, June 30, 1925	7,156 bbl.	3,002 bbl.
Receipts during month of July, 1925	3,498 "	1,439 "
Available Stocks for July, 1925	10,654 "	4,441 "
Shipments during month of July, 1925	5,819 "	2,239 "
	4,835 "	2,202 "
Inventory, July 31, 1925	4,714 bbl.	2,348 bbl.
Receipts during month of August, 1925	12,029 "	3,513 "
Available Stocks for August, 1925	16,743 "	5,861 "
Shipments during month of August, 1925	6,753 "	1,888 "
	9,990 "	3,973 "
Inventory, August 31, 1925	10,188 bbl.	4,063 bbl.
Receipts during month of Sept., 1925	0 "	0 "
Available Stocks for Sept., 1925	10,188 bbl.	4,063 bbl.
Shipments during month of Sept., 1925	4,798 "	1,845 "
	5,390 "	2,218 "
Inventory, Sept. 30, 1925	8,709 bbl.	2,331 bbl.
Receipts during month of October, 1925	8,383 "	3,371 bbl.
Available Stocks for October, 1925	17,092 "	5,702 "
Shipments during month of October, 1925	7,542 "	2,270 "
	9,550 "	3,432 "
[fol. 67] Inventory, Oct. 30, 1925	9,630 bbl.	3,628 bbl.
Receipts during month of November, 1925	4,623 "	2,580 "

	Gas oil 20/22	Grvty. fuel
Available Stocks for November, 1925	14,253 "	6,208 "
Shipments during month of November, 1925	8,552 "	3,734 "
	5,701 "	2,974 "
Inventory, November 30, 1925	5,497 bbl.	2,688 bbl.
Receipts during month of December, 1925	9,811 "	4,106 "
Available Stocks for December, 1925	15,308 "	6,794 "
Shipments during month of December, 1925	10,622 "	4,137 "
	4,686 "	2,657 "

Monthly Inventory and Receipts Polarine Oils Year 1925, Port Tampa, Fla., & Tampa

(All in 50-gallon Barrels)

	Polarine medium	Polarine heavy	Polarine heavy X
Inventory, Dec. 31, 1924	601 bbl.	715 bbl.	413 bbl.
Receipts, mo. of Jan., 1925	197 "	202 "	0 "
Available Stocks, Jan., 1925	797 bbl.	917 bbl.	413 bbl.
Inventory, Jan. 31, 1925	598 bbl.	714 bbl.	512 bbl.
Receipts, mo. of Feb., 1925	490 "	303 "	0 "
Available Stocks, Feb., 1925	1,088 bbl.	1,017 bbl.	512 bbl.
Inventory, Feb. 28, 1925	641 bbl.	767 bbl.	402 bbl.
Receipts, mo. of March, 1925	779 "	777 "	202 "
Available Stocks, March, 1925	1,420 bbl.	1,544 bbl.	604 bbl.
Inventory, March 27, 1925	659 bbl.	327 bbl.	495 bbl.
Receipts, mo. of April, 1925	295 "	390 "	188 "
Available Stocks, April, 1925	954 bbl.	717 bbl.	683 bbl.
[fol. 68] Inventory, May 1, 1925	919 bbl.	602 bbl.	543 bbl
Receipts, mo. of May, 1925	489 "	463 "	199 bbl.
Available Stocks, May, 1925	1,408 bbl.	1,065 bbl.	742 bbl.

Inventory, May 30, 1925	648 bbl.	338 bbl.	412 bbl.
Receipts, mo. of June, 1925	304 "	990 "	0 "
Available Stocks, June, 1925	952 bbl.	1,328 bbl.	412 bbl.
Inventory, June 30, 1925	869 bbl.	830 bbl.	504 bbl.
Receipts, mo. of July, 1925	0 "	397 "	0 "
Available Stocks, July, 1925	869 bbl.	1,227 bbl.	504 bbl.
Inventory, July 31, 1925	660 bbl.	400 bbl.	339 bbl.
Receipts, mo. of August, 1925	860 "	1,488 bbl.	356 bbl.
Available Stocks, August, 1925	1,520 bbl.	1,888 bbl.	695 bbl.
Inventory, August 28, 1925	802 bbl.	473 bbl.	419 bbl.
Receipts, mo. of Sept., 1925	0 "	0 "	0 "
Available Stocks, Sept., 1925	802 bbl.	473 bbl.	419 bbl.
Inventory, Sept. 30, 1925	689 bbl.	58 bbl.	244 bbl.
Receipts, mo. of Oct., 1925	683 "	1,800 "	387 "
Available Stocks, Oct., 1925	1,372 bbl.	1,858 bbl.	631 bbl.
Inventory, Oct. 30, 1925	832 bbl.	451 bbl.	485 bbl.
Receipts, mo. of Nov., 1925	191 "	1,192 bbl.	187 "
Available Stocks, Nov., 1925	1,023 bbl.	1,643 bbl.	672 bbl.

Monthly Inventory, etc.—Continued

	Polarine medium	Polarine heavy	Polarine heavy X
Inventory, Nov. 27, 1925	470 bbl.	83 bbl.	174 bbl.
Receipts, mo. of Dec., 1925	487 "	1,006 "	295 bbl.
Available Stocks, Dec., 1925	957 bbl.	1,089 bbl.	469 bbl.

[fol. 69] Monthly Inventory and Receipts Lubricating Oils Year 1925, Tampa, Fla.

(All in 50-gallon Barrels)

	S pale pffne.	Black oil	Atlantic red eng.	Renown engine
Inventory, Dec. 31, 1924	741 bbl.	161 bbl.	448 bbl.	108 bbl.
Receipts, mo. of Jan., 1925	0	0	0	0
Available Stocks, Jan., 1925	741 bbl.	161 bbl.	448 bbl.	108 bbl.
Inventory, Jan. 31, 1925	786 bbl.	472 bbl.	439 bbl.	134 bbl.
Receipts, mo. of Feb., 1925	0	0	0	0
Available Stocks, Feb., 1925	786 bbl.	472 bbl.	439 bbl.	134 bbl.
Inventory, Feb. 28, 1925	430 bbl.	400 bbl.	306 bbl.	120 bbl.
Receipts, mo. of March, 1925	596 "	189 "	389 "	0
Available Stocks, March, 1925	1,026 bbl.	589 bbl.	695 bbl.	120 bbl.

Inventory, March 27, 1925	799 bbl.	530 bbl.	238 bbl.	108 bbl
Receipts, mo. of April, 1925	0	0	0	0
Available Stocks, April, 1925	799 bbl.	530 bbl.	238 bbl.	108 bbl
Inventory, May 1, 1925	708 bbl.	473 bbl.	508 bbl.	87 bbl.
Receipts, mo. of May, 1925	0	0	200 "	0
Available Stocks, May, 1925	708 bbl.	473 bbl.	708 bbl.	87 bbl.
Inventory, May 30, 1925	681 bbl.	410 bbl.	354 bbl.	42 bbl.
Receipts, mo. of June, 1925	187 "	203 "	205 "	147 "
Available Stocks, June, 1925	868 bbl.	613 bbl.	559 bbl.	189 bbl.
Inventory, June 30, 1925	584 bbl.	361 bbl.	413 bbl.	22 bbl.
Receipts, mo. of July, 1925	0	0	0	0
Available Stocks, July, 1925	584 bbl.	361 bbl.	413 bbl.	22 bbl.
[fol. 70] Inventory, July 31, 1925	553 bbl.	530 bbl.	286 bbl.	84 bbl.
Receipts, mo. of August, 1925	293 "	200 "	201 "	149 "
Available Stocks, August, 1925	846 bbl.	730 bbl.	487 bbl.	233 bbl.
Inventory, Aug. 28, 1925	567 bbl.	501 bbl.	441 bbl.	1 bbl.
Receipts, mo. of Sept., 1925	0	0	0	0
Available Stocks, Sept., 1925	567 bbl.	501 bbl.	441 bbl.	1 bbl.

Monthly Inventory, etc.—Continued

	S pale pfine.	Black oil	Atlantic red eng.	Renown engine
Inventory, Sept. 30, 1925	456 bbl.	428 bbl.	562 bbl.	0 bbl.
Receipts, mo. of Oct., 1925	597 "	0	0	145 "
Available Stocks, Oct., 1925	1,053 bbl.	428 bbl.	562 bbl.	145 bbl.
Inventory, Oct. 30, 1925	703 bbl.	387 bbl.	485 bbl.	170 bbl.
Receipts, mo. of Nov., 1925	203 "	197 "	189 "	0
Available Stocks, Nov., 1925	906 bbl.	584 bbl.	674 bbl.	170 bbl.
Inventory, Nov. 27, 1925	637 bbl.	333 bbl.	419 bbl.	163 bbl.
Receipts, mo. of Dec., 1925	200 "	0	0	0
Available Stocks, Dec., 1925	837 bbl.	333 bbl.	419 bbl.	163 bbl.

I also have an exhibit giving the same information as to inventories, receipts and disbursements for Jacksonville, which I have marked "Exhibit No. 5" and herewith file.

PLAINTIFF'S EXHIBIT 5

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline Year 1925, St. Johns River Terminal, Jacksonville, Fla.

(All 50-gal. Bbbls.)

	Fire proof oil	Crown gasoline
Inventory, Dec. 31, 1924	11,803 bbls.	52,165 bbls.
Receipts month of Jan., 1925	11,191 "	124,411 "
Available stock month of Jan., 1925	22,994 "	176,576 "
Shipments month of Jan., 1925	11,411 "	68,823 "
[fol. 71] Inventory, Jan. 31, 1925	11,552 bbls.	107,471 bbls.
Receipts month of Feb., 1925	10,017 "	69,168 "
Available stock month of Feb., 1925	21,569 "	176,639 "
Shipments month of Feb., 1925	13,954 "	70,671 "
Inventory, Feb. 28, 1925	7,739 "	106,560 "
Receipts month of Mch., 1925	10,504 "	36,225 "
Available stock month of Mch., 1925	18,243 "	142,785 "
Shipments month of Mch., 1925	16,266 "	70,693 "
Inventory, Mch. 31, 1925	2,005 bbls.	72,184 bbls.
Receipts month of Apr., 1925	16,654 "	120,081 "
Available stock month of Apr., 1925	18,659 "	192,265 "
Shipments month of Apr., 1925	9,850 "	66,197 "
Inventory, Apr. 30, 1925	8,658 bbls.	127,132 bbls.
Receipts month of May, 1925	10,044 "	38,171 "
Available stock month of May, 1925	18,702 "	165,303 "
Shipments month of May, 1925	10,814 "	62,003 "

	Fire proof oil	Crown gasoline
Inventory, May 31, 1925	8,003 bbls.	103,438 bbls.
Receipts month of June, 1925	16,014 "	107,714 "
Available stock month of June, 1925	24,017 "	211,152 "
Shipments month of June, 1925	10,726 "	64,805 "
Inventory, June 30, 1925	13,465 bbls.	147,661 bbls.
Receipts month of July, 1925	11,085 "	36,916 "
Available stock month of July, 1925	24,550 "	184,577 "
Shipments month of July, 1925	9,292 "	68,094 "
Inventory, July 31, 1925	15,371 bbls.	116,864 bbls.
Receipts month of Aug., 1925		48,206 "
Available stock month of Aug., 1925	15,371 "	165,070 "
Shipments month of Aug., 1925	10,223 "	82,935 "
[fol. 72] Inventory, Aug. 31, 1925	5,094 bbls.	82,308 bbls.
Receipts month of Sept., 1925	11,119 "	36,980 "
Available stock month of Sept., 1925	16,213 "	119,288 "
Shipments month of Sept., 1925	11,259 "	87,933 "
Inventory, Sept. 30, 1925	5,172 bbls.	31,918 bbls.
Receipts month of Oct., 1925	11,187 "	92,157 "
Available stock month of Oct., 1925	16,359 "	124,075 "
Shipments month of Oct., 1925	14,784 "	88,142 "
Inventory, Oct. 31, 1925	1,888 bbls.	40,358 bbls.
Receipts month of Nov., 1925	16,694 "	116,311 "
Available stock month of Nov., 1925	18,582 "	156,669 "
Shipments month of Nov., 1925	16,861 "	102,702 "

	Fire proof oil	Crown gasoline
Inventory, Nov. 30, 1925	1,496 bbls.	49,945 bbls.
Receipts month of Dec., 1925	22,531 bbls.	101,237 bbls.
Available stock month of Dec., 1925	24,027 bbls.	151,182 bbls.
Shipments month of Dec., 1925	22,981 "	97,135 "
Inventory, Dec. 31, 1925	1,038 bbls.	53,285 bbls.

Tankage—Jacksonville plant—St. Johns River Terminal.

#27— Oils	20,100 bbls.
#32— "	20,500 "
Total	40,600 "
#28—Gasoline	35,500 bbls.
#35— "	23,300 "
#37— "	40,400 "
#39— "	40,000 "
#40— "	23,300 "
Total	162,500 "

[fol. 73] Standard Oil Company (Ky.)

Monthly Inventory and Receipts Heavy Fuel Oil Year 1925, Jacksonville, Fla.

(All in 42-gallon Barrels)

Inventory, Dec. 31, 1924	80,098 bbls.
Receipts during month of Jan., 1925	54,465 "
Available Stocks for January, 1925	134,563 "
Shipments during month of Jan., 1925	118,005 "
	16,558 "
Inventory, Jan. 31, 1925	17,362 bbls.
Receipts during month of Feb. 1925	157,855 "
Available Stocks for February, 1925	165,217 "
Shipments during month of Feb. 1925	119,417 "
	45,800 "

Inventory, Feb. 28, 1925	58,398	bbls.
Receipts during month of March, 1925	162,609	"
Available Stocks for March, 1925	221,007	"
Shipments during month of March, 1925	162,258	"
	58,749	"
Inventory March 31, 1925	61,492	bbls.
Receipts during month of April, 1925	115,470	"
Available Stocks for April, 1925	176,962	"
Shipments during month of April, 1925	116,860	"
	60,102	"
Inventory, April 30, 1925	61,170	bbls.
Receipts during month of May, 1925	56,804	"
Available Stocks for May, 1925	117,974	"
Shipments during month of May, 1925	91,733	"
	26,241	"
[fol. 74] Inventory, May 31, 1925	27,212	bbls.
Receipts during month of June, 1925	111,483	"
Available Stocks for June, 1925	138,695	"
Shipments during month of June, 1925	105,848	"
	32,847	"
Inventory, June 30, 1925	35,050	bbls.
Receipts during month of July, 1925	119,951	"
Available Stocks for July, 1925	155,714	"
Shipments during month of July, 1925	103,238	"
	52,476	"
Inventory, July 31, 1925	52,167	bbls.
Receipts during month of August, 1925	104,547	"

Available Stocks for August, 1925	156,714	bbls.
Shipments during month of August, 1925	119,078	"
	37,636	"
Inventory, August 31, 1925	38,226	bbls.
Receipts during month of Sept. 1925	170,184	"
Available Stocks for Sept., 1925	208,410	"
Shipments during month of Sept., 1925	129,807	"
	78,603	"
Inventory, Sept. 30, 1925	81,214	bbls.
Receipts during month of Oct. 1925	109,668	"
Available Stocks for Oct., 1925	190,882	"
Shipments during month of Oct. 1925	126,955	"
	63,927	"
Inventory, Oct. 30, 1925	71,287	bbls.
Receipts during month of Nov. 1925	114,216	"
Available Stocks for November, 1925	185,503	"
Shipments during month of November, 1925	144,267	"
	41,236	"
[fol. 75] Inventory, Nov. 30, 1925	36,611	bbls.
Receipts during month of Dec. 1925	213,829	"
Available Stocks for December, 1925	250,440	"
Shipments during month of Dec., 1925	144,770	"
	105,670	"

Standard Oil Company (Ky.)

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil Year 1925, Jacksonville, Fla.

(All in 50-gallon Barrels)

	Gas oil		20/22 grvty. fuel	
Inventory, Dec. 31, 1924	2,512	bbl.	3,767	bbl.
Receipts during month of Jan., 1925	9,799	"	2,145	"
Available Stocks for January, 1925	12,311	"	5,912	"
Shipments during month of Jan. 1925	8,410	"	1,602	"
	3,901	"	4,310	"
Inventory, Jan. 31, 1925	3,887	bbl.	4,365	bbl.
Receipts during month of Feb., 1925	11,331	"	480	"
Available Stocks for February, 1925	15,218	"	4,845	"
Shipments during month of Feb. 1925	6,730	"	1,692	"
	8,488	"	3,153	"
Inventory, Feb. 28, 1925	8,564	bbl.	2,188	bbl.
Receipts during month of March, 1925	4,824	"	1,582	"
Available Stocks for March, 1925	13,388	"	3,770	"
Shipments during month of March, 1925	4,817	"	1,267	"
	8,571	"	2,503	"
[fol. 76] Inventory, March 31, 1925	8,574	bbl.	3,510	bbl.
Receipts during month of April, 1925	3,918	"	2,341	"
Available Stocks for April, 1925	12,492	"	5,851	"

	Gas oil	20/22 grvty. fuel
Shipments during month of April, 1925	4,490 bbl.	1,911 bbl.
	8,002 "	3,940 "
Inventory, April 30, 1925	7,988 bbl.	3,999 bbl.
Receipts during month of May, 1925	3,682 "	1,544 "
Available Stocks for May, 1925	11,670 "	5,543 "
Shipments during month of May, 1925	5,165 "	1,818 "
	6,505 "	3,725 "
Inventory, May 31, 1925	6,484 bbl.	3,768 bbl.
Receipts during month of June, 1925	6,442 "	1,875 bbl.
Available Stocks for June, 1925	12,926 "	5,643 "
Shipments during month of June, 1925	5,356 "	1,658 "
	7,570 "	3,985 "
Inventory, June 30, 1925	7,630 bbl.	4,057 bbl.
Receipts during month of July, 1925	4,476 "	835 "
Available Stocks for July, 1925	12,106 "	4,892 "
Shipments during month of July, 1925	6,164 "	745 "
	5,942 "	4,147 "
Inventory, July 31, 1925	5,963 bbl.	4,167 bbl.
Receipts during month of August, 1925	5,147 bbl.	675 "
Available Stocks for August, 1925	11,110 "	4,842 "
Shipments during month of August, 1925	4,963 "	1,070 "
	6,147 "	3,772 "

Inventory, August 31, 1925	6,007	bbl.	3,824	bbl.
Receipts during month of Sept. 1925	4,590	"	1,557	"
Available Stocks for Sept. 1925	10,570	"	5,381	"
Shipments during month of Sept. 1925	5,846	"	1,669	"
	5,111	"	3,712	"
[fol. 77] Inventory, Sept. 30, 1925	5,211	bbl.	3,771	bbl.
Receipts during month of October, 1925	5,096	"	871	"
Available Stocks for October, 1925	10,307	"	4,642	"
Shipments during month of October, 1925	7,166	"	2,007	"
	3,141	"	2,635	"
Inventory, October 30, 1925	3,081	bbl.	2,639	bbl.
Receipts during month of November, 1925	9,213	"	2,753	"
Available Stocks for November, 1925	12,294	"	5,392	"
Shipments during month of November, 1925	8,260	"	1,353	"
	4,034	"	4,039	"
Inventory, Nov. 30, 1925	4,026	bbl.	4,038	bbl.
Receipts during month of December, 1925	8,306	"	1,108	"
Available Stocks for December, 1925	12,332	"	5,146	"
Shipments during month of December, 1925	9,452	"	2,457	"
	2,880	"	2,689	"

Monthly Inventory and Receipts Polarine Oils Year 1925, Jacksonville, Fla.

(All in 50-gallon Barrels)

	Polarine medium	Polarine heavy	Polarine hvy. X	Polarine hvy. XX
Inventory, Dec. 31, 1924	355 bbl.	682 bbl.	551 bbl.	296 bbl.
Receipts, mo. of Jan., 1925	1,481 "	1,607 "	633 "	302 "
Available Stocks for Jan. 1925	1,836 "	2,289 "	1,184 "	598 "
Inventory, Jan. 31, 1925	509 bbl.	830 bbl.	506 bbl.	418 bbl.
Receipts, mo. of Feb. 1925	1,483 "	998 "	298 "	0 "
Available Stocks for Feb. 1925	1,991 "	1,828 "	804 "	418 "
Inventory, Feb. 28, 1925	667 bbl.	627 bbl.	606 bbl.	444 bbl.
Receipts, mo. of March, 1925	1,003 "	709 "	0 "	0 "
Available Stocks for March, 1925	1,670 bbl.	1,336 bbl.	606 bbl.	444 bbl.
[fol. 78] Inventory, Mch. 27, 1925	453 bbl.	537 bbl.	668 bbl.	393 bbl.
Receipts, mo. of April, 1925	1,522 "	1,722 "	396 "	189 "
Available Stocks for Apr. 1925	1,975 bbl.	2,259 bbl.	1,064 bbl.	582 bbl.

Monthly Inventory, etc.—Continued

	Polarine medium	Polarine heavy	Polarine hvy. X	Polarine hvy. XX
Inventory, April 30, 1925	510 bbl.	588 bbl.	638 bbl.	350 bbl.
Receipts, Mo. of May, 1925	987 "	1,003 "	202 "	00 "
Available Stocks for May, 1925	1,497 bbl.	1,591 bbl.	840 bbl.	350 bbl.
Inventory, May 30, 1925	760 bbl.	366 bbl.	456 bbl.	204 bbl.
Receipts, mo. of June, 1925	979 "	2,419 "	703 "	0 "
Available stocks for June, 1925	1,739 bbl.	2,785 bbl.	1,159 bbl.	204 bbl.
Inventory, June 30, 1925	1,193 bbl.	681 bbl.	559 bbl.	254 bbl.
Receipts, mo. of July, 1925	781 "	1,171 "	201 "	303 "
Available Stocks for July 1925	1,974 "	1,852 "	760 "	557 "
Inventory, July 31, 1925	684 bbl.	463 bbl.	505 bbl.	135 bbl.
Receipts, mo. of August 1925	790 "	1,796 "	349 "	0 "
Available Stocks for Aug., 1925	1,474 bbl.	2,259 bbl.	854 bbl.	135 bbl.
Inventory, August 28, 1925	1,225 bbl.	572 bbl.	385 bbl.	171 bbl.
Receipts, mo. of Sept. 1925	707 "	1,189 "	406 "	405 bbl.
Available Stocks for Sept., 1925	1,932 bbl.	1,761 bbl.	791 bbl.	576 bbl.
Inventory, Sept. 30, 1925	882 bbl.	425 bbl.	294 bbl.	167 bbl.
Receipts, mo. of October, 1925	440 "	948 "	0 "	0 "
Available Stocks for Oct. 1925	1,322 bbl.	1,373 bbl.	294 bbl.	167 bbl.

Inventory, Oct. 30, 1925	1,100 bbl.	488 bbl.	232 bbl.	189 bbl.
Receipts, mo. of November, 1925	786 "	3,681 "	885 "	382 "
Available Stocks for Nov., 1925	1,886 bbl.	4,169 bbl.	1,117 bbl.	572 bbl.
Inventory, Nov. 27, 1925	1,066 bbl.	487 bbl.	2,013 bbl.	412 bbl.
Receipts, mo. of December, 1925	3,973 "	3,483 "	1,175 "	195 "
Available Stocks of Dec. 1925	5,039 bbl.	3,970 bbl.	3,188 bbl.	607 bbl.

[fol. 79] Monthly Inventory and Receipts Lubricating Oils, Year 1925, Jacksonville, Fla.

(All in 50-gallon Barrels)

	S pale pffne	Black oil	Atlantic red eng.	Standard gas eng.	Renown engine
Inventory, Dec. 31, 1924	252 Bbl.	236 Bbl.	213 Bbl.	200 Bbl.	357 Bbl.
Receipts, mo. of Jan. 1925	494 "	188 "	508 "	0 "	0 "
Available Stocks, Jan. 1925	746 Bbl.	424 Bbl.	721 Bbl.	200 Bbl.	357 "
Inventory, Jan. 31, 1925	568 Bbl.	310 Bbl.	514 Bbl.	127 Bbl.	242 Bbl.
Receipts, mo. of Feb. 1925	196 "	0 "	0 "	0 "	203 "
Available Stocks, Feb. 1925	764 Bbl.	310 Bbl.	514 Bbl.	127 Bbl.	445 Bbl.

Monthly Inventory, etc.—Continued

	S pale pfine	Black oil	Atlantic red eng.	Standard gas eng.	Renown engine
Inventory, Feb. 28, 1925	667 Bbl.	232 Bbl.	396 Bbl.	67 Bbl.	146 Bbl.
Receipts, mo. of March, 1925	0 "	203 "	190 "	204 "	0 "
Available Stocks, Mch. 1925	667 "	435 "	586 "	271 "	146 "
Inventory, Mch. 27, 1925	561 Bbl.	192 Bbl.	225 Bbl.	6 Bbl.	286 Bbl.
Receipts, mo. April, 1925	202 "	0 "	203 "	0 "	0 "
Available Stocks, Apr. 1925	763 Bbl.	192 Bbl.	428 Bbl.	6 Bbl.	286 Bbl.
Inventory, April 30, 1925	598 Bbl.	299 Bbl.	435 Bbl.	148 Bbl.	171 Bbl.
Receipts, mo. May, 1925	0 "	0 "	192 "	0 "	0 "
Available Stocks, May, 1925	598 Bbl.	299 Bbl.	627 Bbl.	148 Bbl.	171 Bbl.
Inventory, May 30, 1925	394 Bbl.	170 Bbl.	281 Bbl.	93 Bbl.	286 Bbl.
Receipts, mo. June, 1925	485 "	201 "	0 "	191 "	0 "
Available Stocks, June, 1925	879 Bbl.	371 Bbl.	281 Bbl.	284 Bbl.	286 Bbl.
Inventory, June 30, 1925	645 Bbl.	269 Bbl.	333 Bbl.	194 Bbl.	365 Bbl.
Receipts, mo. July, 1925	0 "	0 "	202 "	0 "	0 "
Available Stocks, July, 1925	645 Bbl.	269 Bbl.	535 Bbl.	194 Bbl.	365 Bbl.

Inventory, July 31, 1925	491 Bbl.	161 Bbl.	139 Bbl.	152 Bbl.	230 Bbl.
Receipts, mo. Aug. 1925	0 "	194 "	388 "	0 "	0 "
Available Stocks, Aug. 1925	491 Bbl.	355 Bbl.	527 Bbl.	152 Bbl.	230 Bbl.
Inventory, Aug. 28, 1925	316 Bbl.	61 Bbl.	175 Bbl.	115 Bbl.	357 Bbl.
Receipts, mo. Sept. 1925	389 "	0 "	0 "	0 "	0 "
Available Stocks, Sept. 1925	705 Bbl.	61 Bbl.	175 Bbl.	115 Bbl.	357 Bbl.
Inventory, Sept. 30, 1925	146 Bbl.	149 Bbl.	285 Bbl.	63 Bbl.	137 Bbl.
Receipt-, mo. Oct. 1925	194 "	201 "	220 "	214 "	202 "
Available Stocks, Oct. 1925	340 Bbl.	350 Bbl.	505 Bbl.	277 Bbl.	339 Bbl.
Inventory, Oct. 30, 1925	559 Bbl.	222 Bbl.	298 Bbl.	205 Bbl.	201 Bbl.
Receipts, mo. Nov. 1925	198 "	180 "	205 "	0 "	208 "
Available Stocks, Nov. 1925	757 Bbl.	402 Bbl.	503 Bbl.	205 Bbl.	409 Bbl.
Inventory, Nov. 27, 1925	467 Bbl.	151 Bbl.	314 Bbl.	172 Bbl.	137 Bbl.
Receipts, mo. Dec. 1925	0 "	0 "	294 "	0 "	0 "
Available Stocks, Dec. 1925	467 Bbl.	151 Bbl.	608 Bbl.	172 Bbl.	137 Bbl.

[fol. 80] We do not use any particular tanks for products going to any particular section. All of our gasoline tanks are lumped, and all of our refined oil tanks are lumped, etc. When any particular cargo of either gasoline or refined oil is pumped into a tank, nobody knows where it is going.

There are no points outside of Florida supplied from Port Tampa. But about 20% or 30% of the total tankage at Jacksonville goes to points outside of Florida. There is no separation, however, at Jacksonville of the stuff as it comes in there that is going to be used to supply Florida points and that which is going to be used outside of Florida. It is all in the same tank or tanks.

About 13% of the refined oil and gasoline at Jacksonville is used at Jacksonville itself.

None of these products are used at Port Tampa. We have no delivery facilities or wagons there.

Tampa is about 8 miles from Port Tampa.

I will file statements for the year 1924, which give the same information as to monthly inventory receipts of fire proof oil and gasoline as is given in the one for 1925. They are as follows:

Standard Oil Company, Incorporated

Receipts and Shipments Lubricating Oils, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All in 50-gal. Bbls.)

1923		
July	1,054	bbls.
Aug.	798	"
Sept	—	
Oct.	1,214	"
Nov.	1,046	"
Dec.	969	"
1924		
Jan.	1,600	"
Feb.	1,082	"
March	—	
April	2,490	"
May	706	"
June	713	"

1924		
July	——	bbls.
Aug.	1,600	"
[fol. 81] Sept.	1,191	bbls.
Oct.	2,584	"
Nov.	3,467	"
Dec.	1,967	"

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All in 50-gal. Bbls.)

Inventory June 30, 1923	8611	bbls.
Receipts month of July, 1923		
Available stock month of July, 1923	8611	bbls.
Shipments month of July, 1923	2519	"
Inventory July 31, 1923	6129	bbls.
Receipts month of August, 1923		
Available stock month of August, 1923	6129	"
Shipments month of August, 1923	2084	"
Inventory August 31, 1923	4049	bbls.
Receipts month of September, 1923	3750	"
Available stock month of September, 1923	7799	"
Shipments month of September, 1923	2590	"
Inventory September 30, 1923	5172	bbls.
Receipts month of October, 1923	4631	"
Available stock month of October, 1923	9803	"
Shipments month of October, 1923	4386	"
Inventory October 31, 1923	5457	bbls.
Receipts month of November, 1923	10364	"
Available stock month of November, 1923	15821	"
Shipments month of November, 1923	5278	"

[fol. 82] Inventory November 30, 1923	10464	bbls.
Receipts month of December, 1923	4968	"
Available stock month of December, 1923	15432	"
Shipments month of December, 1923	7360	"
Inventory December 31, 1923	8167	bbls.
Receipts month of January, 1924	9602	"
Available stock month of January, 1924	17769	"
Shipments month of January, 1924	4271	"
Inventory January 31, 1924	13389	bbls.
Receipts month of February, 1924	2969	"
Available stock month of February, 1924	16358	"
Shipments month of February, 1924	3746	"
Inventory February 29, 1924	12588	bbls.
Receipts month of March, 1924	1943	"
Available stock month of March, 1924	14531	"
Shipments month of March, 1924	4565	"
Inventory March 31, 1924	10097	bbls.
Receipts month of April, 1924	7800	"
Available stock month of April, 1924	17897	"
Shipments month of April, 1924	4660	"
Inventory April 30, 1924	13416	bbls.
Receipts month of May, 1924	3142	"
Available stock month of May, 1924	16558	"
Shipments month of May, 1924	4216	"
Inventory May 31, 1924	12349	bbls.
Receipts month of June, 1924	3754	"
Available stock month of June, 1924	16103	"
Shipments month of June, 1924	4259	"

Inventory June 30, 1924	11918	bbls.
Receipts month of July, 1924		
Available stock month of July, 1924	11918	"
Shipments month of July, 1924	4146	"
[fol. 83] Inventory July 31, 1924	7767	bbls.
Receipts month of August, 1924	5031	"
Available stock month of August, 1924	12798	"
Shipments month of August, 1924	4621	"
Inventory August 31, 1924	8227	bbls.
Receipts month of September, 1924	7676	"
Available stock month of September, 1924	15903	"
Shipments month of September, 1924	5486	"
Inventory September 30, 1924	10521	bbls.
Receipts month of October, 1924	11862	"
Available stock month of October, 1924	22383	"
Shipments month of October, 1924	8821	"
Inventory October 31, 1924	13647	bbls.
Receipts month of November, 1924	8065	"
Available stock month of November, 1924	21712	"
Shipments month of November, 1924	8804	"
Inventory November 30, 1924	13012	bbls.
Receipts month of December, 1924	13933	"
Available stock month of December, 1924	26945	"
Shipments month of December, 1924	10014	"

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Heavy Fuel Oil, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All in 42-gal. Bbls.)

Inventory June 30, 1923	101952	bbls.
Receipts month of July, 1923		
Available stock month of July, 1923	101952	"
Shipments month of July, 1923	27894	"
[fol. 84] Inventory July 31, 1923	74154	bbls.
Receipts month of August, 1923	48502	"
Available stock month of August, 1923	122656	"
Shipments month of August, 1923	37302	"
Inventory August 31, 1923	85600	bbls.
Receipts month of September, 1923	48005	"
Available stock month of September, 1923	133605	"
Shipments month of September, 1923	33836	"
Inventory September 30, 1923	99569	bbls.
Receipts month of October, 1923		
Available stock month of October, 1923	99569	"
Shipments month of October, 1923	33224	"
Inventory October 31, 1923	66094	bbls.
Receipts month of November, 1923	48643	"
Available stock month of November, 1923	114737	"
Shipments month of November, 1923	32133	"
Inventory November 30, 1923	82133	bbls.
Receipts month of December, 1923	47173	"
Available stock month of December, 1923	129306	"
Shipments month of December, 1923	39870	"

Inventory December 31, 1923	89175	bbls.
Receipts month of January, 1924		
Available stock month of January, 1924	89175	bbls.
Shipments month of January, 1924	64332	"
Inventory January 31, 1924	26755	bbls.
Receipts month of February, 1924	149753	"
Available stock month of February, 1924	176508	"
Shipments month of February, 1924	82605	"
Inventory February 29, 1924	92091	bbls.
Receipts month of March, 1924	89543	"
Available stock month of March, 1924	181634	"
Shipments month of March, 1924	72408	"
[fol. 85] Inventory March 31, 1924	108615	bbls.
Receipts month of April, 1924	42101	"
Available stock month of April, 1924	150716	"
Shipments month of April, 1924	66027	"
Inventory April 30, 1924	84217	bbls.
Receipts month of May, 1924	42051	"
Available stock month of May, 1924	126268	"
Shipments month of May, 1924	73559	"
Inventory May 31, 1924	51884	bbls.
Receipts month of June, 1924	98861	"
Available stock month of June, 1924	150745	"
Shipments month of June, 1924	56424	"
Inventory June 30, 1924	94705	"
Receipts month of July, 1924	47956	"
Available stock month of July, 1924	142661	"
Shipments month of July, 1924	65239	"

Inventory July 31, 1924	77112 bbls.
Receipts month of August, 1924	47471 "
Available stock month of August, 1924	124583 "
Shipments month of August, 1924	71651 "
Inventory August 31, 1924	53187 bbls.
Receipts month of September, 1924	48866 "
Available stock month of September, 1924	102053 "
Shipments month of September, 1924	67911 "
Inventory September 30, 1924	33903 bbls.
Receipts month of October, 1924	74060 "
Available stock month of October, 1924	107963 "
Shipments month of October, 1924	70249 "
Inventory October 31, 1924	37330 bbls
Receipts month of November, 1924	88471 "
Available stock month of November, 1924	125801 "
Shipments month of November, 1924	78514 "
[fol. 86] Inventory November 30, 1924	47012 bbls.
Receipts month of December, 1924	103676 "
Available stock month of December, 1924	150688 "
Shipments month of December, 1924	90347 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline, July 1, 1923, to December 31, 1924, Port Tampa, Fla.

(All 50-gal. Bbls.)

	Fire proof oil	Crown gasoline
Inventory June 30, 1923	2632 bbls.	36212 bbls.
Receipts month of July, 1923	11004 "	29234 "
Available stock month of July, 1923	13636 "	65446 "
Shipments month of July, 1923	4442 "	20416 "

	Fire proof oil	Crown gasoline
Inventory July 31, 1923	9199 bbls.	44996 bbls.
Receipts month of August, 1923		
Available stock month of August, 1923	9199 bbls.	44996 bbls.
Shipments month of August 1923	6833 "	26199 "
Inventory August 31, 1923	3365 bbls.	18695 "
Receipts month of September, 1923	2890 "	18351 "
Available stock month of September, 1923	6255 "	37046 "
Shipments month of September, 1923	5473 "	27080 "
Inventory September 30, 1923	782 bbls.	9860 bbls.
Receipts month of October, 1923	11126 "	49587 "
Available stock month of October, 1923	11908 "	59447 "
Shipments month of October, 1923	9602 "	30670 "
Inventory October 31, 1923	2297 bbls.	28449 bbls.
Receipts month of November, 1923	22316 "	58955 "
Available stock month of November, 1923	24613 "	87404 "
Shipments month of November, 1923	10562 "	32235 "
[fol. 87] Inventory November 30, 1923	10408 bbls.	55028 bbls.
Receipts month of December, 1923	5624 "	34766 "
Available stock month of December, 1923	19672 "	89794 "
Shipments month of December, 1923	9117 "	37812 "

	Fire proof oil	Crown gasoline
Inventory December 31, 1923	10590 bbls.	51895 bbls.
Receipts month of January, 1924		26965 "
Available stock month of January, 1924	10590 "	78860 "
Shipments month of January, 1924	8534 "	37605 "
Inventory January 31, 1924	1990 bbls.	41054 "
Receipts month of February, 1924	11083 "	29300 "
Available stock month of February, 1924	13073 "	70354 "
Shipments month of February, 1924	11814 "	39938 "
Inventory February 29, 1924	1553 bbls.	30375 bbls.
Receipts month of March, 1924	12947 "	25247 "
Available stock month of March, 1924	14500 "	55622 "
Shipments month of March, 1924	8379 "	35977 "
Inventory March 31, 1924	6188 bbls.	19649 bbls.
Receipts month of April, 1924	11166 "	69453 "
Available stock month of April, 1924	17354 "	89102 "
Shipments month of April, 1924	5986 "	36610 "
Inventory April 30, 1924	11369 bbls.	52571 bbls.
Receipts month of May, 1924	11069 "	28984 "
Available stock month of May, 1924	22438 "	81555 "
Shipments month of May, 1924	6787 "	36030 "
Inventory May 31, 1924	15790 bbls.	45584 bbls.
Receipts month of June, 1924	11133 "	29153 "
Available stock month of June, 1924	26923 "	74737 "
Shipments month of June, 1924	5929 "	31426 "

	Fire proof oil	Crown gasoline
[fol. 88] Inventory June 30, 1924	10068 bbls.	43193 bbls.
Receipts month of July, 1924	....	22269 "
Available stock month of July, 1924	10068 "	65462 "
Shipments month of July, 1924	5232 "	32560 "
Inventory July 31, 1924	4829 bbls.	33566 bbls.
Receipts month of August, 1924	5577 "	34805 "
Available stock month of August, 1924	10406 "	68371 "
Shipments month of August, 1924	5789 "	30619 "
Inventory August 31, 1924	4637 bbls.	37594 bbls.
Receipts month of September, 1924	5711 "	23697 "
Available stock month of September, 1924	10348 "	61291 "
Shipments month of September, 1924	6570 "	36834 "
Inventory September 30, 1924	3756 bbls.	24215 bbls.
Receipts month of October, 1924	20166 "	62514 "
Available stock month of October, 1924	23922 "	86729 "
Shipments month of October, 1924	8277 "	36269 "
Inventory October 31, 1924	15643 bbls.	50255 bbls.
Receipts month of November, 1924	11149 "	32711 "
Available stock month of November, 1924	26792 "	82966 "
Shipments month of November, 1924	9260 "	39226 "

	Fire proof oil	Crown gasoline
Inventory November 30, 1924	17495 bbls.	43616 bbls.
Receipts month of December, 1924	10041 "	79053 "
Available stock month of December, 1924	27536 "	122669 "
Shipments month of December, 1924	10657 "	47044 "

[fol. 89] Standard Oil Company, Incorporated

Receipts and Shipments Lubricating Oils, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 50-gal. Bbls.)

1923.	
July	1,945 bbls.
Aug.	1,959 "
Sept.	2,622 "
Oct.	2,332 "
Nov.	2,581 "
Dec.	4,665 "
1924.	
Jan.	3,356 "
Feb.	2,571 "
March	1,560 "
April	2,290 "
May	5,174 "
June	1,526 "
July	2,264 "
Aug.	3,857 "
Sept.	2,531 "
Oct.	2,204 "
Nov.	1,947 "
Dec.	6,773 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Gas Oil and 20/22 Gravity Fuel Oil, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 50-gal. Bbls.)

Inventory June 30, 1923	4,891 bbls.
Receipts Month of July, 1923	3,050 "
Available stock month of July, 1923	7,941 "
Shipments month of July, 1923	3,478 "
[fol. 90] Inventory July 31, 1923	4,478 bbls.
Receipts month of August, 1923	2,355 "
Available stock month of August, 1923	6,833 "
Shipments month of August, 1923	3,878 "
Inventory August 31, 1923	2,954 bbls.
Receipts month of September, 1923	4,886 "
Available stock month of September, 1923	7,840 "
Shipments month of September, 1923	3,189 "
Inventory September 30, 1923	4,688 bbls.
Receipts month of October, 1923	4,788 "
Available stock month of October, 1923	9,476 "
Shipments month of October, 1923	3,850 "
Inventory October 31, 1923	5,469 bbls.
Receipts month of November, 1923	2,427 "
Available stock month of November, 1923	7,896 "
Shipments month of November, 1923	4,832 "
Inventory November 30, 1923	3,026 bbls.
Receipts month of December, 1923	12,544 "
Available stock month of December, 1923	15,570 "
Shipments month of December, 1923	5,007 "

Inventory December 31, 1923	10,551 bbls.
Receipts month of January, 1924	5,054 "
Available stock month of January, 1924	15,605 "
Shipments month of January, 1924	5,754 "
Inventory January 31, 1924	9,806 bbls.
Receipts month of February, 1924	7,141 "
Available stock month of February, 1924	16,947 "
Shipments month of February, 1924	4,962 "
Inventory February 29, 1924	11,979 bbls.
Receipts month of March, 1924	2,019 "
Available stock month of March, 1924	13,998 "
Shipments month of March, 1924	7,345 "
[fol. 91] Inventory March 31, 1924	6,696 bbls.
Receipts month of April, 1924	4,751 "
Available stock month of April, 1924	11,447 "
Shipments month of April, 1924	4,733 "
Inventory April 30, 1924	6,729 bbls.
Receipts month of May, 1924	7,325 bbls.
Available stock month of May, 1924	14,054 "
Shipments month of May, 1924	3,949 "
Inventory May 31, 1924	10,300 bbls.
Receipts month of June, 1924	6,216 "
Available stock month of June, 1924	16,516 "
Shipments month of June, 1924	4,766 "
Inventory June 30, 1924	11,809 bbls.
Receipts month of July, 1924	4,019 "
Available stock month of July, 1924	15,828 "
Shipments month of July, 1924	5,516 "

Inventory July 31, 1924	10,466 bbls.
Receipts month of August, 1924	7,042 "
Available stock month of August, 1924	17,508 "
Shipments month of August, 1924	6,448 "
Inventory August 31, 1924	11,577 bbls.
Receipts month of September, 1924	
Available stock month of September, 1924	11,577 "
Shipments month of September, 1924	5,190 "
Inventory September 30, 1924	6,358 bbls.
Receipts month of October, 1924	11,851 "
Available stock month of October, 1924	18,209 "
Shipments month of October, 1924	6,062 "
Inventory October 31, 1924	12,127 bbls.
Receipts month of November, 1924	4,297 "
Available stock month of November, 1924	16,424 "
Shipments month of November, 1924	8,000 "
[fol. 92] Inventory November 30, 1924	8,474 bbls.
Receipts month of December, 1924	12,622 "
Available stock month of December, 1924	21,096 "
Shipments month of December, 1924	9,290 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Heavy Fuel Oil, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 42-gal. Bbls.)

Inventory June 30, 1923	59,787 bbls.
Receipts month of July, 1923	48,130 "
Available stock month of July, 1923	107,917 "
Shipments month of July, 1923	46,945 "

Inventory July 31, 1923	62,236 bbls.
Receipts month of August, 1923	47,660 "
Available stock month of August, 1923	109,896 "
Shipments month of August, 1923	51,497 "
Inventory August 31, 1923	59,285 bbls.
Receipts month of September 1923	49,618 "
Available stock month of September, 1923	108,903 "
Shipments month of September, 1923	46,929 "
Inventory September 30, 1923	62,615 bbls.
Receipts month of October, 1923	49,516 bbls.
Available stock month of October, 1923	112,131 "
Shipments month of October, 1923	72,040 "
Inventory October 31, 1923	41,202 bbls.
Receipts month of November, 1923	90,165 "
Available stock month of November, 1923	131,367 "
Shipments month of November, 1923	65,755 "
[fol. 93] Inventory November 30, 1923	66,756 bbls.
Receipts month of December, 1923	89,216 "
Available stock month of December, 1923	155,972 "
Shipments month of December, 1923	88,509 "
Inventory December 31, 1923	69,014 bbls.
Receipts month of January, 1924	140,138 "
Available stock month of January, 1924	209,152 "
Shipments month of January, 1924	121,434 "
Inventory January 31, 1924	90,205 bbls.
Receipts month of February, 1924	48,416 "
Available stock month of February, 1924	138,621 "
Shipments month of February, 1924	79,694 "

Inventory February 29, 1924	59,347 bbls.
Receipts month of March, 1924	96,261 "
Available stock month of March, 1924	155,608 "
Shipments month of March, 1924	98,859 "
Inventory March 31, 1924	59,407 bbls.
Receipts month of April, 1924	95,192 "
Available stock month of April, 1924	154,599 "
Shipments month of April, 1924	90,754 "
Inventory April 30, 1924	65,742 bbls.
Receipts month of May, 1924	100,410 "
Available stock month of May, 1924	166,152 "
Shipments month of May, 1924	88,019 "
Inventory May 31, 1924	79,132 bbls.
Receipts month of June, 1924	48,328 "
Available stock month of June, 1924	127,460 "
Shipments month of June, 1924	41,417 "
Inventory June 30, 1924	86,787 bbls.
Receipts month of July, 1924	48,459 "
Available stock month of July, 1924	135,246 "
Shipments month of July, 1924	51,913 "
[fol. 94] Inventory July 31, 1924	85,051 bbls.
Receipts month of August, 1924	47,596 "
Available stock month of August, 1924	132,647 "
Shipments month of August, 1924	60,602 "
Inventory August 31, 1924	72,272 bbls.
Receipts month of September, 1924	46,549 "
Available stock month of September, 1924	118,821 "
Shipments month of September, 1924	73,557 "

Inventory September 30, 1924	47,091 bbls.
Receipts month of October, 1924	78,025 "
Available stock month of October, 1924	125,116 "
Shipment month of October, 1924	75,680 "
Inventory October 31, 1924	51,407 bbls.
Receipts month of November, 1924	74,396 "
Available stock month of November, 1924	125,803 "
Shipments month of November, 1924	94,951 "
Inventory November 30, 1924	31,485 bbls.
Receipts month of December, 1924	149,022 "
Available stock month of December, 1924	180,507 "
Shipments month of December, 1924	101,934 "

Standard Oil Company, Incorporated

Monthly Inventory and Receipts Fire Proof Oil and Crown Gasoline, July 1, 1923, to December 31, 1924, Jacksonville, Fla. (Talleyrand Supply Station)

(All 50-gal. Bbls.)

	Fire-proof oil	Crown gasoline
Inventory 30, 1923	12531 bbls.	78159 bbls.
Receipts month of July, 1923	11007 "	29292 "
Available Stock month of July, 1923	23538 "	107451 "
Shipments month of July 1923	8761 "	41103 "
[fol. 95] Inventory July 31, 1923	14788 bbls.	66217 bbls.
Receipts month of August, 1923	5557 "	34937 "
Available Stock month of August, 1923	20345 "	101154 "
Shipments month of August, 1923	8647 "	50062 "
Inventory August 31, 1923	11690 "	50854 "
Receipts month of September, 1923	5588 "	34929 "

	Fire-proof oil	Crown gasoline
Available Stock month of September, 1923	17278 bbls.	85783 bbls.
Shipments month of September, 1923	9247 "	49087 "
Inventory September 30, 1923	8037 "	36507 "
Receipts month of October, 1923	16051 "	103951 "
Available Stock month of October, 1923	24088 "	140458 "
Shipments month of October, 1923	11933 "	58649 "
Inventory October 31, 1923	12118 "	81283 "
Receipts month of November, 1923	16622 "	23973 "
Available Stock month of November, 1923	28740 "	105256 "
Shipments month of November, 1923	23157 "	64051 "
Inventory November 30, 1923	5483 "	40480 "
Receipts month of December, 1923	19440 "	92401 "
Available Stock month of December, 1923	24923 "	132881 "
Shipments month of December, 1923	13493 "	53369 "
Inventory December 31, 1923	11484 "	79341 "
Receipts month of January 1924	11198 "	68929 "
Available Stock month of January, 1924	22682 "	148270 "
Shipments month of January, 1924	14748 "	71374 "
Inventory January 31, 1924	7862 "	76249 "
Receipts month of February, 1924	23559 "	56994 "

	Fire-proof oil	Crown gasoline
Available Stock month of February, 1924	31421 bbls.	133243 bbls.
Shipments month of February, 1924	14525 "	56489 "
[fol. 96] Inventory February 29, 1924	16840 bbls.	76450 bbls.
Receipts month of March, 1924	16702 "	64137 "
Available Stock month of March, 1924	33542 "	140587 "
Shipments month of March, 1924	9928 "	61612 "
Inventory March 31, 1924	23660 "	78876 "
Receipts month of April, 1924		3999 "
Available Stock month of April, 1924	23660 "	118875 "
Shipments month of April, 1924	7244 "	54695 "
Inventory April 30, 1924	16501 "	64340 "
Receipts month of May, 1924	11119 "	69334 "
Available Stock month of May, 1924	27620 "	133674 "
Shipments month of May, 1924	8609 "	51051 "
Inventory May 31, 1924	19093 bbls.	82753 bbls.
Receipts month of June, 1924	27697 "	52790 "
Available stock month of June, 1924	46790 "	135543 "
Shipments month of June, 1924	4724 "	44087 "
Inventory June 30, 1924	16585 bbls.	91478 bbls.
Receipts month of July, 1924	5623 "	34685 "
Available stock month of July, 1924	22208 "	126163 "
Shipments month of July, 1924	14970 "	49675 "
Inventory July 31, 1924	7078 bbls.	76320 bbls.
Receipts month of August, 1924	11320 "	69064 "

	Fire-proof oil	Crown gasoline
Available stock month of August, 1924	18398 bbls.	145384 bbls.
Shipments month of August, 1924	7510 "	48929 "
Inventory August 31, 1924	10655 bbls.	96553 bbls.
Receipts month of September, 1924	....	....
Available stock month of September, 1924	10655 bbls.	96553 bbls.
Shipments month of September, 1924	8867 "	67408 "
[fol. 97] Inventory September 30, 1924	1838 bbls.	28650 bbls.
Receipts month of October, 1924	28798 "	90114 "
Available stock month of October, 1924	30636 "	118764 "
Shipments month of October, 1924	19612 "	55396 "
Inventory October 31, 1924	11037 bbls.	63309 bbls.
Receipts month of November, 1924	11243 "	36939 "
Available stock month of November, 1924	22280 "	100248 "
Shipments month of November, 1924	13416 "	54291 "
Inventory November 30, 1924	8852 bbls.	45726 bbls.
Receipts month of December, 1924	28477 "	142226 "
Available stock month of December, 1924	37329 "	187952 "
Shipments month of December, 1924	14121 "	59989 "

The Company has one warehouse at Tampa. There is a stock of oil in barrels delivered in trucks from the Tampa warehouse. And in this same warehouse are various grades

of lubricating oil, gasoline, pumps, heaters, candles and greases. When I refer to other grades of lubricating oil, I mean, for example, mobile oil packed in barrels. We receive them in barrels. We receive them from Rochester. The warehouse referred to is just a general warehouse for reserve supply. And the warehouse at Jacksonville is practically the same thing.

We have two stations at Jacksonville. One is called St. Johns River Terminal, where all of our storage tanks are located, and into which the boats discharge their cargoes; and then another station at Kings Road about two and a half miles from the other point. The gasolines that we receive are brought to St. Johns and pumped into the storage tanks and reloaded into tank cars and taken to Kings Road and dumped into tanks there and deliveries are made there and all barrel shipments are made from that point.

Cross-examination by Major Davis, counsel for defendant:

We have had the present arrangements, same as those we now have, with the Standard Oil Company of Louisiana for [fol. 98] the purchase of products for four or five years or maybe longer. We have no regular contract with the Standard Oil Company of Louisiana to furnish us as we need with the products which it provides. We do not buy all our refined oil and gasoline from the Standard Oil Company of Louisiana; but we do buy from them all that we use of these products in the State of Florida.

Their refineries are at Baton Rouge in the State of Louisiana.

There is no oil produced in Florida or in Georgia, so far as I know.

I have no monthly statement showing the incoming of ships into Port Tampa and Jacksonville to supply our oil needs, but I believe for the two ports in the year 1925 we received a total of about 89 ships, of which 38 came into Port Tampa and 51 to Jacksonville. I cannot say whether this is fairly typical of other years or not.

1925 was not typical especially as to the last six months. We did more business in 1925 than we did in 1924. For the first six months of 1925, our gasoline increased in the State of Florida about 20%, and for the last six months about

75%. Our increase by months for the year on gasoline averaged all the way from a gain of 14% to a gain of practically 100%.

Refined oil sales for the first six months of 1925, gained approximately 3%, the second six months of 1925 the gain was approximately 39%. For the first three months in 1925 we had losses on both. It was nine and three [illegible] February and March, but for the next four months there was a gain.

The 123 bulk stations which we have in Florida are at 123 different points scattered all over the State. A very large percentage of our shipments of gas go to our bulk stations. I should say it would exceed 90%.

A bulk station is a plant where we have storage tanks for certain grades, a pump house, side track facilities and delivery facilities. Our wagons operate out of these bulk stations in making deliveries to customers, but they are not service stations. All tank wagons are supplied from the bulk stations. We have some carload customers—tank car service. Most of our tank car shipments to customers we ship from Port Tampa and Jacksonville.

The tank car customers vary in number, but there are not many of them. Most people buy direct from the stations. We have certain grades of lubricating oil which we sell from the bulk stations.

Fuel oil is sold direct into cities and towns, largely towns in the Bone Valley District.

[fol. 99] This fuel oil is sold largely on contracts. Generally these contracts are made ahead of time with fuel oil customers and we supply them when they want it.

As to refined oil, I should say that 90% or more goes to the bulk stations.

At these bulk stations our agents keep a record, say weekly or daily, or whatever it may be, and then send in their report to our Jacksonville manager, and we regulate our supply according to the statements so shown. There will be times when we will probably have sufficient gasoline on hand at one of those bulk stations to last long enough, but we anticipate an increase in the price of gasoline at the primary points. We request under those conditions that our local bulk station tanks be filled to the limit regardless of the other tankage and relieve our storage at Port Tampa

and Jacksonville that much to enable us to bring in gasoline and other supplies. Market conditions vary depending on the price at the point of supply and on how much we have on hand.

None of these oils that go into Port Tampa are sold there. It is my understanding that it is all destined to other points in Florida.

When lubricating oil is brought into Port Tampa in a ship, it is pumped through pipe lines direct from the ship into cars—a whole trainload—and carried away.

Fuel oil goes into fuel tanks and then is repumped from the tank into tank cars. Very little fuel oil goes to bulk stations.

The explanation of the fact that in one of our orders to the Standard Oil Company of Louisiana we designated certain ships, the Waring and the Polarine, in which the oil was to be shipped, is that the Standard Oil Company of Louisiana advised us, after the return of those boats, that they were available for another trip. They do or they don't advise us, and in case they advise us it is available, we place our orders for refined oil and gasoline and a good many grades of lubricating oil, and we must know the ship, because there are other ships that cannot carry lubricating oil at all. Sometimes only one ship is available and sometimes more than one ship. Sometimes they are delivering to us from three boats and at other times from only one.

The oil we get from Mexico is brought from the Standard Oil Company of New Jersey. We do not charter the boat that brings it. It is brought by us at a price delivered. The only oil we get from there is a heavy fuel oil, and this oil is sold to various cities and towns and to manufacturing [fol. 100] industries down in the Bone Valley District.

The Court having asked "Where are those phosphate mines," Major Davis, counsel for defendant, answered "There is a number of them 60 miles southeast of Jacksonville. That entire section is filled with phosphate mines."

The witness resuming said:

The tank cars that we use down there are not owned by the Standard Oil Company of Kentucky. We have a contract with the Union Tank Car Line Co. for the use of them.

Some of our fuel oil customers furnish their own cars. The railroads have no tank cars.

Our agent at Port Tampa receives orders from our Jacksonville office, and I understand in certain cases the shipments are made direct to the customers. Upon general authority he can ship that way. Whereupon counsel for defendant asked the following question, to which the following answer was given:

"Q. The point I want to make is this that he sells no oil himself from Port Tampa?

A. It is simply an agency there."

As to the warehouse at Kings Road, we distribute from it to tank wagons and barrels. We do not ship in tank cars by railroad from there. Of the products we receive at the St. Johns River Terminal, we, except in cases of emergency, make shipments from the Jacksonville terminal, the St. Johns River Terminal. Our warehouse in Jacksonville is for distribution locally.

Re-examination by Mr. Middleton, counsel for plaintiff:

As to how long a product like gasoline, refined oil, or lubricating oil stays at Port Tampa or Jacksonville, this depends on the market condition in our business. But for the first six months of 1925, our average sales of refined oil and gasoline at Florida stations, supplied from those two terminal stations, approximated 110,000 barrels per month, whereas our tankage at Port Tampa and St. Johns River Terminals for the same two products were 327,000 barrels, representing approximately three months' supply based upon our business for the first six months in 1925. In other words, with business conditions as they were in the first six months of 1925, refined oil or gasoline could have stayed in those ports for three months. Of course time varies with the business transactions. It may move out pretty rapidly. At other times when business is slow, it does not move [fol. 101] rapidly. During boom times we sometimes run out of gasoline. And our tankage not only at Port Tampa and St. Johns River Terminal, but our bulk marketing sta-

tions, are not based, by any means, upon the business we did the last six months of the year. It was impossible to get additional tank capacity or do anything towards increasing our storage and delivery supply.

I did not mean to say in response to Major Davis' question that Kings station was only a local distributing station for Jacksonville. I understood him to refer to tank delivery. We barrel approximately 3,500 barrels per month, and ship out to I don't know how many points in Florida. It is a distributing station for deliveries. I understood him to say tank deliveries. It is a regular distributing station for certain products and it is not correct to call Kings Road a local distributing station. We ship stuff from Kings Road all over Florida. It also supplies Jacksonville by tank wagons.

ARTHUR M. STEPHENS

ARTHUR M. STEPHENS, called for the plaintiff, testified as follows:

My name is Arthur M. Stephens. I am at the present time Traffic Manager of the Standard Oil Company of Kentucky. I have held that position for three and a half years. I have a general knowledge of the rate situation in Florida.

Since June 15, 1923, the railroads, with the exception of the Florida East Coast Railroad, the Southern Railway Company and the Louisville & Nashville Railroad Company, are applying interstate rates on both carload and less than carload shipments from Jacksonville, Port Tampa and Tampa, Florida, to inland points in Florida. The Atlantic Coast Line Railroad is applying interstate rates.

I file herewith a copy of the contract between the Standard Oil Company of Kentucky and the Union Tank Car Line, marking same "Exhibit No. 6." It is as follows:

PLAINTIFF'S EXHIBIT No. 6

This Indenture, made and entered into this fifteenth day of September, one thousand nine hundred and seventeen,

Between Union Tank Line Company, a New Jersey Corporation, hereinafter called the Car Company, party of the first part, and Standard Oil Company (Kentucky) corpo- [fol. 102] ration, hereinafter called the Oil Company, party of the second part, Witnesseth:

Whereas, the Car Company owns a large number of tank cars which conform to the requirements of the laws of the various States and of the United States and are suitable for the transportation of crude petroleum oil and its various refinery products; and

Whereas, the Oil Company is in need of such equipment for the distribution of its oils and for the handling of other materials requiring tank car transportation:

Now, It Is Agreed, between the said parties as follows:

1. The Car Company, for and in consideration of the terms and conditions hereinafter set forth, agrees to lease and furnish and the Oil Company agrees to accept and use such tank cars of the Car Company as may be necessary for the transportation of the Oil Company's products.

2. The Oil Company agrees that its tracks at Savannah, Ga., Port Tampa, Fla., Jacksonville, Fla., Key West, Fla., Pensacola, Fla., Louisville, Ky., or any loading point hereafter established shall be considered Home Tracks for any part of the Car Company's equipments that said tracks may reasonably contain, without detriment to the Oil Company's business; and further agrees that the car company shall have free use thereof, i. e., the Oil Company agrees to give the Car Company, without charge, rights to the use of all the trackage, in and about the Oil Company's plants which shall be available without detriment to the Oil Company's business, for the Car Company's tank cars for any purpose whatsoever the same as though such trackage were owned by the Car Company. The Oil Company agrees to perform, or assume the expense of, all switching within or about its plants where such switching is occasioned by the natural operation of the plants or by instructions of the Car Company.

3. The Oil Company further agrees that it will inspect all cars placed for loading in order to comply with Interstate Commerce Commission regulations as to shipper's responsibilities.

4. The Car Company agrees to charge and the Oil Company agrees to pay the following amounts for the use of any and all of the Car Company's equipment so leased and furnished to the Oil Company under the terms of this contract:

A per diem charge for each day the car is under load of one and three-quarters (1¾) cents for each one hundred (100) gallons capacity thereof, figuring the capacity to the [fol. 103] nearest unit of one hundred (100) gallons, anything over fifty (50) gallons to be considered as one hundred (100) gallons; and in addition for each time the car is loaded a charge equal to three times the per diem for such car, except that the per diem and loading charges for a car of less than six thousand (6,000) gallons capacity shall be the same as for a car having a capacity of six thousand (6,000) gallons.

The per diem charge shall be computed from the day the loading of the car is begun until the day the unloading of the car is completed, including both days. No additional charge will be made for cars equipped with the heater pipes.

In case the Car Company furnishes any special type of car, special rates for such cars will be named.

The above charges shall apply to cars in road haul and in switching service, to cars used for storage or for any other purpose.

It is agreed that bills for the above charges shall be rendered monthly and shall be paid within thirty (30) days thereafter, in New York exchange.

It is further agreed that, in addition to the above charges to be received by the Car Company, any and all mileage allowed by the railroads under the Tariffs filed by them with the Interstate Commerce Commission shall be collected and retained by the Car Company.

It is agreed that any car prior to the time of its being placed or ordered placed for loading and after the time it is made empty shall be subject to the orders of the Car Company, and the Oil Company agrees to carry out instructions of the Car Company as to the movement of any such empty car.

6. Whereas, the Oil Company ships oils of various kinds, that is, Crude Oil, Fuel, Refined Oil, Gasoline, etc., and as

the movements of such oils vary in quantities, it is frequently necessary to use cars for one kind of oil that were previously loaded with another kind of oil; therefore, the oil company agrees, at its own expense and upon its own responsibility, to do all the cleaning of such cars as may be necessary so that the cars may be prepared for the handling of its business.

7. It is understood and agreed that as cars are required from time to time the Oil Company will give the Car Company prior notice thereof reasonably sufficient to enable the Car Company to assemble the cars required and order them forward to the Oil Company.

It is further understood and agreed that the Car Company shall not be responsible for failure to furnish cars [fol. 104] where, with due regard for the needs of all its lessees, it is unable to do so by reason of the limits of its total equipment, as then constituted, railroad car congestion, or any other matter beyond the Car Company's control, whether of a similar nature or otherwise.

8. The Oil Company agrees, without charge to the Car Company, to furnish any and all information and to do such things as may reasonably be required by the Car Company to facilitate car distribution, the movement of the cars and the keeping of a record of its equipment in relation to the Oil Company's business.

The Oil Company agrees to report dates of loading and unloading in connection with Section Four of this contract.

The Car Company may, at its option, secure from the Oil Company's consignee such information in relation to the Car Company's cars as it may require for the completion of its records.

It is agreed that in the event of the failure of the oil company to obtain and furnish the Car Company promptly the dates of unloading, the Car Company shall estimate the date of unloading and use such estimated date of unloading for the purpose of rendering bills for the use of the cars as provided in Section Four of this contract, subject to an adjustment if actual dates of unloading are subsequently furnished.

9. It is further agreed that the tracks of the Oil Company at its unloading stations, that is, points of destina-

tion, shall not be considered Home Tracks for the Car Company as in the case of the tracks at the Oil Company's shipping points, and that the Car Company's cars, both loaded and empty, at such points of destination shall be subject to railroad demurrage charges as provided for in the various railroad tariffs filed with the Interstate Commerce Commission, such demurrage charges, if any, to be chargeable to and paid by the Oil Company, or other consignees.

10. The Oil Company agrees not to let or sub-let any of the Car Company's cars while in the service of the Oil Company, without the Car Company's consent.

11. The Car Company agrees that the Oil Company shall not be held responsible for losses of cars covered by this lease or damage thereto occasioned by wrecks or otherwise while the cars are in the possession of the railroad transportation companies, but the Oil Company shall be responsible for all damage to the Car Company's equipment occurring while the cars are being switched or other- [fol. 105] wise handled by the Oil Company or are in its possession under load.

12. It is further agreed that the Car Company shall not be liable for any loss or damage to the contents of its cars.

13. It is agreed that this indenture shall continue in full force and effect from the date of its execution until cancelled by six (6) months' notice in writing to that effect given by mail by either party to the other, and at the expiration of said period of six (6) months from the date of mailing such notice, this indenture shall be and shall be considered cancelled and of no further force or effect.

14. This lease is made in New York and is to be interpreted according to the laws thereof.

In Witness Whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

Union Tank Line Company, by Wm. A. Barstow, Vice President. Attest: E. F. Cook, Secretary.

Standard Oil Company (Kentucky), by C. T. Collins, President. Attest: J. S. Steidle, Secretary.

The Atlantic Coast Line Railroad Company has no equipment for the handling of gasoline and refined oil in tanks. The Oil Company must get such equipment from other sources.

When a car of gasoline or refined oil is emptied at one of our bulk stations, our agent at the destination makes out a billing order upon the railroad to move the car as an empty to the original shipping point, consigning same to the Union Tank Car Company and not the Standard Oil Company. In other words, when a car is moved from the rails of the carrier as an empty, it is subject to the instructions of the Union Tank Car Company. The Standard Oil pays rental only when the cars are full.

It was agreed between counsel for plaintiff and defendant and the Court that at this hearing the parties would not go into the various shipments set out in the petition, but that that matter, to wit, the matter of accounting should be [fol. 106] held in abeyance pending a decision on the rate to be applied.

Upon movements from Port Tampa to Tampa of lubricating oil, the local transportation is subject to a switching charge that is applicable to both inter and intrastate traffic. When this lubricating oil reaches Tampa and is barreled and placed in the warehouse there and is then moved out of the warehouse, it carries the interstate rate, whether it moves out in carload lots or in less than carload lots. And the same thing is true of Jacksonville.

On Polarine oil moving from Port Tampa, to Tampa, the interstate rates are applied. On lubricating oils in cans, such as Polarine, that are warehoused in our warehouse at Tampa, when it moves out from Tampa, the interstate rate is applied. As to candles and stoves that have been in the warehouses, they apply the intrastate rate, and that sometimes moves in the same car with Polarine oil and other lubricating oil in barrels and cases. We may have a less than carload shipment made up of mixed products, Polarine oil, lubricating oil, candles and stoves, and apply the interstate rate to one class of commodity and the intrastate rate to the other commodity.

Cross-examination by Major Davis, counsel for defendant:

As to the rate from Port Tampa to Tampa, some call this a switching charge and some call it local transportation. The rate is a tariff rate.

It is ten or eleven miles from Port Tampa to Tampa. Port Tampa is not in the same switching district as Tampa. I am willing to be corrected in my statement that the transportation charge from Port Tampa to Tampa is a switching charge. Call it a local transportation charge.

Referring to Jacksonville, the charge for handling stuff from the St. Johns River Terminal to Jacksonville and from and to the Kings Road station at Jacksonville is a cross town movement, a switching charge, applicable to both interstate and intrastate traffic, and is not involved in this case.

William W. Zachary

William W. Zachary, called for the plaintiff, testified as follows:

I am District Manager of the Standard Oil Company in Florida, having headquarters at Jacksonville with charge of the State of Florida.

[fol. 107] Counsel for plaintiff asked the witness whether or not plaintiff paid local taxes on its products at Port Tampa and at Jacksonville, to which counsel for defendant objected, but the Court overruled the objection and allowed the witness to answer. He thereupon stated that the Company did pay taxes on its supplies both at Jacksonville and at Port Tampa; that it listed for taxation the property it held in storage tanks. The witness then proceeded as follows:

There are six or seven men employed at Port Tampa. About the only equipment there besides the tanks are the pipe lines. There is no office there; only a telephone station.

The equipment at St. Johns River Terminal is very much the same and about the same number of men are employed there.

I understand the pipe lines at Jacksonville belong to the Standard Oil Company of Kentucky. We have a superintendent that attends to them. The oil is pumped out by the crew of the boat. Our man tells them in which tank to put the stuff. He has information about where to go.

As a sample of a fuel order contract which we make with our customers, I file a copy of one between the Standard Oil Company of Kentucky and the Phosphate Mining Company, marking same "Plaintiff's Exhibit No. 7." It is as follows:

PLAINTIFF'S EXHIBIT NO. 7

Mexican Fuel Oil

An Agreement made this 31st day of October 1924 between the Standard Oil Company, a corporation organized and existing by virtue of the laws of the State of Kentucky (Jacksonville, Fla. Office) hereinafter called the Seller and the Florida Phosphate & Mining Corporation, Bartow, Fla. (main office Norfolk, Va.) hereinafter called the Buyer whereby the Seller agrees to sell to the Buyer and the Buyer agrees to buy from the Seller 50,000 barrels of Mexican fuel oil for delivery during the period of 12 months from November 15, 1924 at a price of one dollar and thirty five cents ($1.35) per barrel of 42 U. S. Standard gallons, in tank cars, f. o. b. Port Tampa, Florida.

It is further understood and agreed as follows:

1. The oil is to be used exclusively in the plant of the Buyer at Royster, Fla. and must not be resold by the Buyer.

2. Buyer shall order and receive the oil at the rate of approximately 4,000 barrels per month from November 15, [fol. 108] 1924 to November 14, 1925, both inclusive. If Buyer does not take all the oil it is entitled to in any one month then Seller is not obligated to deliver the amount not taken at any future time.

3. That in cases of fires, strikes, or other unavoidable causes on account of which the works of the Buyer covered by this contract are shut down, either in whole or in part, at any time during the life of this agreement, then the Buyer shall not be required to take any more oil for fuel at its works than is absolutely necessary during such stop-

page, after the Seller has received notice of the shutting down or partial shutting down of Buyer's plant for causes herein specified, such oil as Buyer does require shall be taken under this contract.

All orders will be filled with reasonable promptness, but fires, strikes, inability of the Seller to secure from its suppliers at regular intervals deliveries in proportion to quantities of oil purchased from their suppliers or transport the product covered by this agreement, or any other cause beyond its control, shall excuse the Seller from making deliveries or fulfilling this contract.

4. Buyer shall *apy* any import tax if one shall hereafter be imposed by the United States.

5. Should there be any increase in taxes imposed *by* on oil by the Mexican Government over and above 19 cents per barrel, the amount of the present tax, such increase shall be paid by Buyer on all deliveries under this contract. Should there be a decline below 19 cents per barrel Buyer is to receive benefit of same.

6. It is agreed that if the Buyer shall hold tank cars beyond the railroad free time allowance therefor, Buyer will assume all proper demurrage charges and in addition thereto will reimburse Seller for such tank car rental as it is obliged to pay the owners of such cars for the period in excess of railroad free time allowance during which the cars may be detained.

7. Payment for all oil delivered in each month shall be made not later than the tenth day of the succeeding month.

8. Should Buyer fail to comply with the terms of payment specified in this contract or its financial responsibility become impaired or unsatisfactory to Seller, cash payment or satisfactory security may be demanded and if refused Seller shall have the right to cancel this contract.

9. This contract cannot be sold, transferred or assigned without the written consent of the Seller.

[fol. 109] This contract is subject to the approval of an Officer, District Manager or Assistant District Manager of the Seller.

Standard Oil Company, by W. W. Zachary. Florida Phosphate & Mining Corp., by C. F. Burroughs, V. Pt.

The fuel oil goes to the Bone Valley District and a great deal of it goes down on the east coast around Orlando, and Lakeland, and Deland and the middle part of Florida. The rest of this is sold on contract before it comes into the State. Some of it is held subject to current demands. And there is no separation between the two classes. It all goes into the same tank and comes out of the same tank. When a carload comes in, we do not know where it is going or when it is going.

The deliveries under these contracts are very irregular. They are requirement contracts—very largely so treated by both seller and buyer.

They use this fuel oil to get the rock out, and the demand for the fertilizer depends on the conditions of the farms—somewhat uncertain. It is necessary for us to have a large storage in handling fuel oil. Our customers require it, and I have had same of them, when I was trying to negotiate contracts, ask how much storage facilities we have at our point of supply. They have to know that there is adequate storage.

Cross-examined by Major Davis:

At the bulk stations, we have tanks for storage of gasoline, and we have tanks for the storage of refined oil, and at some points we have storage tanks for lubricating oil, and we have warehouses and truck tanks used for delivery, and we have tank wagons for gasoline, and some for lubricating.

The number of men required depends on the service required—anywhere from 5 to 50.

The size of the bulk stations depends largely on the amount of business done there.

It is not true that we make all of our sales at the bulk stations. We make a lot of sales right in Jacksonville.

Everything that we sell in those towns we don't carry in our local stations, but a lot is shipped direct from Jacksonville to points where we have local stations. Sometimes an order is given to the local agent and he sends it in and [fol. 110] sometimes it is given to traveling salesmen and they send it in by a letter or telegram.

None of it is bought through Port Tampa or St. Johns River Terminal—no sales at all made there, or very little.

Our fuel oil contract calls for a certain amount of barrels per month to be shipped each month as long as the contract lasts. Those estimates vary considerably. But our custom is to be called on for a stipulated amount each month.

I do not think it would be possible to conduct the business we have in Florida without these storage tank facilities. You couldn't get enough cars to handle the contracts—we could not hold the cars. It would be entirely impracticable to try to do business without a large reserve storage.

We are a marketing company. We hold stuff in Florida ready to supply the demands of customers at all times, which demand varies from season to season and frequently in unexpected fashion. It may increase or fall off. We have to be prepared to take care of the demand. We were out at Jacksonville some time last year. And I do not think our tankage there is sufficiently large.

We are constantly getting in supplies of different kinds of Polarine oil, greases and other supplies which we carry in the warehouse at Tampa and Jacksonville. Some of these supplies stay in two or three months, and some longer. We have some that come in by railroad in barrels that stays in three months or maybe six months.

In barreling oil, we have a pipe line running from the storage tank and they put a barrel under a nozzle and fill the barrel. It is a mechanical apparatus.

I don't recall the size of our storage at Tampa or at Orlando. I do not carry those sizes in my head.

W. G. Violet Recalled

Mr. Violet resumed the stand and was interrogated by Major Davis, counsel for defendant, and testified as follows:

In explanation of some of the terms used in the exhibits heretofore filed, I will explain that "fire proof oil" is refined oil.

"Crown gasoline" means motor gasoline. "Crown" is just a trade name. We receive only one grade of gasoline by boat, and that is all that is involved in this case so far as gasoline is concerned.

[fol. 111] "Heavy fuel oil" is around 11 gravity such as we sell to the Phosphate Mines and railroads.

"Gas oil" is a lighter oil used mostly, or to a large extent, in internal combustion engines.

20.22 gravity oil is a somewhat ligher gravity of fuel oil.

We have Polarine and Medium Polarine and Heavy on this Port Tampa exhibit. Those oils come in vessels to Port Tampa.

There is nothing on Exhibit 4 that does not come through Port Tampa.

At this point the witness, still under examination by counsel for defendant, was examined and testified as follows:

"Q. I notice Exhibit 4 starts off by showing the inventory December 31st, 1924 gasoline 75,107 barrels and then you show the receipts for the month of January 45,662 barrels, total available 120,769 barrels and the shipments for the month of January 1925 58,406 barrels and the different between those two precedes the inventory for the next month does it not?

A. Not necessarily.

Q. Why not?

A. Because temperature conditions have a great deal to do with it.

Q. How much difference would there be in barrels?

A. I don't know except that gasoline would expand or contract about one per cent of its volume for each sixteen

to seventeen degrees variation in temperature. Another thing, the receipts at Port Tampa as we show there are based upon our purchases as indicated by those invoices at 65 degrees temperature.

Q. What I am trying to get at is this: The sum total of your inventory plus what we took in and less what we took out is that figure 58,406 barrels?

A. Yes, sir; but they are figured on a different basis.

Q. You start out the next month however with 62,285 barrels or 4,000 barrels more?

A. That is all right even eliminating the temperature proposition. We have to determine when these boats get in and the amount of stuff we take before and after the boats get in. There will always be a variation. We show [fol. 112] the receipts for January, 1925 45,662 barrels of gasoline. We paid for that much and we received that much reduced to a 65 degree temperature basis. The shipments at Port Tampa and our inventory at Port Tampa were based upon measurements regardless of temperature and sometimes there is as high as eighty-five or ninety degrees of temperature.

Q. What I could not understand is this that in January you show a balance of the inventory 58,406 barrels and on the 1st of February you sold 62,285 and that is 4,000 barrels more than it should be and yet the next month you show that you had 49,948 and you carry forward 46,385 or approximately 3,000 barrels less, 4,000 barrels more in the first month and 3,000 barrels less in the second month?

A. I shall have to investigate that. I cannot determine now why that should be even with the temperature and other conditions—it must be the difference in the temperature. The inventory is made regardless of temperature and the shipments regardless of temperature but the receipts indicating the amount we paid for are at 65 degrees temperature.

Q. What is the approximate temperature at Port Tampa in January and February?

A. Pretty warm down there.

Mr. Middleton: I don't know that this witness can determine that.

The Court: I think we had better have the advertising about the temperature of Florida from some real estate fellow down there.

Q. Was that the case in refined oil?

A. On the same basis. Refined oil and gasoline are purchased on a 65 degree temperature basis.

Q. How about heavy oil—fuel oil?

A. 63 degrees.

Q. Does that make a difference?

A. Yes, sir; on heavy the variation is one per cent for approximately 25 degrees.

Q. Does it run up or down?

A. Both ways depending on the temperature.

Q. Would that explain the difference of 2,000 or 3,000 barrels in the statement?

A. Absolutely.

Q. Polarine oil in Exhibit 4 you show Port Tampa, Florida and Tampa. Explain that exhibit please?

A. This statement shows a combination of Tampa and Port Tampa necessarily on the face of it because we [fol. 113] separate December 31st and preceding months in 1925 in the inventory and we have no tankage for lubricating oil at Port Tampa.

Q. It is different at Jacksonville you have tankage there?

A. Yes, sir; we have now.

Q. By Mr. Middleton: Since the middle of the year?

A. Since September or October, 1925. That is approximate, I don't know exactly but we didn't have it for the entire year 1925—not for the entire year of 1925 did we have the St. Johns River Terminal.

The plaintiff rested.

J. W. Morris

J. W. Morris was called as a witness for the defendant, and, being examined by Major Davis, counsel for defendant, testified as follows:

I live in Tampa, Florida, and am the general agent of the Atlantic Coast Line Railroad Company at Port Tampa, Florida; having been such for twenty-two years. As such

general agent, I have charge of the terminals at Port Tampa and the Atlantic Coast Line property there. I handle the shipping in and out, except where commodities or vessels are represented by particular agents of the owners.

I am quite familiar with the methods of Oil Companies at Port Tampa and in a general way I know what is done at Tampa.

The Standard Oil Company, the Gulf Refining Company and the Seaboard Oil Company, are all located at Port Tampa. They are in active business now. The National Petroleum Corporation is also located there, though at the present time it has suspended operations.

The Mexican Petroleum Company and the Texas Oil Company have yards at Tampa.

The Gulf Refining Company brings its products into Port Tampa in tank ships owned by the Gulf Refining Company. The products of these other Oil Companies are distributed in absolutely the same way as the Standard of Kentucky distributes.

The Gulf Refining Company has its own refinery at the Port there, but gets its fuel oil from Tampico, Mexico. It [fol. 114] brings its own products on its own ships to Port Tampa and places it in its own tanks. The method of handling from that point is exactly the same as done by the Standard Oil of Kentucky there.

The flow of oil through the tanks is practically continuous. They are loading tank cars through the receiving tanks continuously throughout every day in the year, except some Sundays. The Standard Oil Company does not do that on every Sunday; but it is practically continuous from the tanks. Frequently oil is coming out of the tanks at the same time that it is being pumped into them by the ship.

The ships pump the oil. I do not know who pays for the pumping. The Standard Oil Company pays me the wharfage, which charge is for the products passing over the wharf and includes the berth to accommodate the ship and wharfage over which it passes.

The oil passes over the wharf in pipe lines. When the steamer ties up in the wharf, the Standard Oil Company places its men there and they commence pumping immediately from the pipe line to the receiving tank.

STATEMENT OF PETROLEUM PRODUCTS RECEIVED BY V
PRODUCTS FORWARDED IN TANK C

	GASOLINE				
	Received	FORWARDED Cars	Barges	Total	Received
1923					
June	11,311,978	.....	571,309	.....	1,199,688
July	9,525,424	.....	304,366	.....	3,593,621
August	.....	.....	597,089	.....	.....
September	5,984,748	.....	473,002	.....	2,168,259
October	16,190,143	.....	766,814	.....	3,638,250
November	19,408,435	.....	721,439	.....	10,747,044
December	11,436,440	.....	1,136,507	.....	3,544,860
TOTALS	73,857,168	.....	4,570,526	.....	24,891,722
1924					
January	8,902,555	11,047,212	1,420,709	12,467,921	1,830,074
February	9,691,744	11,903,383	1,284,522	13,187,905	4,643,931
March	8,346,215	10,427,475	1,408,361	11,835,836	4,933,328
April	22,815,210	10,589,736	1,070,718	11,660,454	6,217,595
May	9,495,486	11,088,270	845,585	11,933,855	4,653,911
June	9,487,434	9,317,506	833,527	10,151,033	7,991,835
July	7,248,252	9,859,220	1,001,999	10,861,219	.....
August	11,331,672	9,564,885	664,844	10,229,729	2450,862
September	93,082	11,856,211	945,945	12,802,156	7,720,547
October	20,498,148	10,635,963	1,488,023	12,123,986	6,682,461
November	10,778,658	11,513,937	1,418,274	12,932,211	5,811,146
December	26,020,236	13,543,323	2,071,694	15,615,017	7,050,860
TOTAL	144,708,692	131,347,121	14,454,201	145,801,322	59,986,550

DEFENDANT'S EXHIBIT No. 1.

BY VESSEL AND PUMPED THEREFROM TO PLANT OF STANDARD OIL COMPANY PORT TAMPA, FLA., AND ALSO PETROLEUM
NK CARS FROM PORT TAMPA AND PUMPED INTO BARGES AT PORT TAMPA BY STANDARD OIL COMPANY
FROM JUNE, 1923 TO DECEMBER, 1925, INCLUSIVE.

REFINED OIL FORWARDED				LUBRICATING OIL FORWARDED				FUEL OIL FORWARDED				ALL PETROLEUM PRODUCTS FORWARDED			
eived	Cars	Barges	Total	Received	Cars	Barges	Total	Received	Cars	Barges	Total	Received	Cars	Barges	Total
99,688	.....	67,914	.....	220,374	.....	.....	.....	14,369,527	.....	.....	.....	27,101,567	14,654,206	639,223	15,293,429
98,621	.....	56,272	.....	347,886	.....	.....	.....	.....	.....	23,621	.....	13,466,931	25,836,598	384,259	26,220,857
.....	.....	73,735	.....	.....	.....	.....	.....	14,825,836	.....	.....	.....	14,825,836	30,741,157	670,824	31,411,981
68,259	.....	112,543	.....	263,340	.....	.....	.....	14,760,826	.....	.....	.....	23,177,173	31,870,524	585,545	32,456,069
88,250	.....	150,751	.....	400,554	.....	.....	.....	1,698,211	.....	.....	.....	21,927,158	37,039,938	917,565	37,957,503
47,044	.....	112,622	.....	345,114	.....	.....	.....	14,879,239	.....	.....	.....	45,379,832	38,230,388	834,061	39,064,449
44,860	.....	168,815	.....	319,889	.....	.....	.....	14,353,055	.....	.....	.....	29,654,244	43,804,229	1,305,322	45,109,551
91,722	.....	742,652	.....	1,897,157	.....	.....	.....	74,886,694	.....	23,621	.....	175,532,741	222,177,040	5,336,799	227,513,839
30,074	2,880,446	225,232	3,105,678	528,066	739,791	.....	739,791	1,494,016	12,833,074	.....	12,833,074	12,754,711	27,500,523	1,645,941	29,146,464
43,931	3,616,950	225,265	3,842,215	357,034	271,392	.....	271,392	43,922,301	25,534,226	.....	25,534,226	58,615,010	41,325,951	1,509,787	42,835,738
33,328	2,666,022	168,960	2,834,982	.....	40,425	.....	40,425	27,374,876	23,801,531	.....	23,801,531	40,654,419	36,935,453	1,577,321	38,512,774
17,595	1,998,781	169,303	2,168,084	821,621	555,632	.....	555,632	12,571,268	22,131,082	.....	22,131,082	42,425,694	35,275,231	1,240,021	36,515,252
53,911	2,196,254	56,350	2,252,604	231,125	535,880	.....	535,880	12,692,776	24,326,897	.....	24,326,897	27,073,298	38,147,301	901,935	39,049,236
91,835	2,090,962	320,301	2,411,263	235,343	204,698	.....	204,698	30,216,938	18,886,947	.....	18,886,947	47,931,550	30,500,113	1,153,828	31,653,941
.....	1,532,218	72,491	1,604,709	.....	133,484	.....	133,484	14,618,182	27,111,909	.....	27,111,909	21,866,434	38,636,831	1,074,490	39,711,321
50,862	1,799,675	73,326	1,873,001	528,066	653,702	.....	653,702	14,479,876	22,739,355	715,735	23,455,090	28,790,476	34,757,617	1,453,905	36,211,522
20,547	1,949,386	186,199	2,135,585	393,070	329,788	.....	329,788	15,747,293	21,362,426	694,172	22,056,598	23,953,992	35,497,811	1,826,316	37,324,127
82,461	2,627,558	228,367	2,855,925	1,373,249	887,704	.....	887,704	23,785,243	24,077,751	372,383	24,450,140	52,339,101	38,228,982	2,088,773	40,317,755
11,146	3,358,365	297,944	3,656,309	623,146	760,637	.....	760,637	27,527,822	26,106,739	672,734	26,779,473	44,740,772	41,739,678	2,388,952	44,128,630
50,860	3,137,867	295,680	3,433,547	649,203	475,344	.....	475,344	32,653,316	31,312,575	316,809	31,629,384	66,373,615	48,469,109	2,684,183	51,153,292
86,550	29,854,484	2,319,418	32,173,902	5,739,923	5,588,477	.....	5,588,477	257,083,907	280,224,518	2,771,833	282,996,351	467,519,072	447,014,600	19,545,452	466,560,052

I file herewith, as "Defendant's Exhibit No. 1," a statement which shows the oil products of the Standard Oil Company of Kentucky received at Port Tampa from June 1, 1923 to December 31, 1924, a statement made up from the defendant's original record. It is as follows:

(Here follows Defendant's Exhibit No. 1, marked side folio page 115)

[fol. 116] Cross-examination by Mr. Middleton:

The Railroad Company has nothing to do with the unloading of the boats that bring the Standard Oil Company supplies into Port Tampa.

The Standard Oil Company does not own the property upon which the tanks are located. This is leased from the defendant, Atlantic Railroad Company.

The wharfage charge I have spoken of is not the rental charge under that lease. It is a charge collected by our Company.

There is a switch between our Company and the Standard through the yards for some distance and over the wharf. They pay us a regular rental for the tank space which is different from the wharfage. The Standard owns the pipe lines They pay a wharfage charge at one-half cent a barrel on 42 gallons.

The Gulf Refining Company gets its gasoline and oil from Port Arthur and its crude oil from Tampico. All of the refined oil comes from Port Arthur.

The Gulf Refining Company has just about the same number of steamers coming in to Port Tampa as does the Standard Oil Company, towit, about three or four per month. They do practically the same amount of business—very close to it.

The Standard Oil Company has in some months only two steamers coming in and some months four, and I suppose they might have five but probably not more than five.

The time when oil and gasoline are being pumped from the boat into a tank and from the tank into tank cars simultaneously is possibly one-third of the time. Some of the ships take longer to pump than others. Some last two or three days and some others can be pumped out in one day.

If they have two a month and it took a day to pump each one, there would be two days. There is no stoppage of shipping out from the tank into tank cars on account of pumping in. They are pumping in and shipping out at the same time, whenever a boat happens to be there and they happen to be loading tank cars.

Attention of the witness was called by counsel for plaintiff to the fact that in a lease from the Atlantic Coast Line Company and the Atlantic Land & Improvement Company to the Standard Oil Company, there is this provision: "The lessee, the Standard Oil Company, shall pay the lessor a further consideration for the privilege herein granted in addition to the rental of $537.00 hereinbefore provided, [fol. 117] etc.", to which the witness responded:

I told you the wharfage was separate. It may be a part of the lease, but the rental of the land does not cover the wharfage. The wharfage is governed by the regular tariff rates filed with the Interstate Commerce Commission.

The Gulf Refining Company and the Seaboard Oil Company have oil stations all over Florida, and they issue to their bulk stations.

There is no consumption of oil at Port Tampa. And there is no oil produced in Florida.

The Gulf Refining Company owns refineries at Port Arthur.

Both sides here rested. And this is all the evidence that was introduced upon the trial.

JUDGE'S CERTIFICATE TO STATEMENT OF EVIDENCE

The foregoing statement of the evidence heard upon the trial of the above styled cause is hereby approved.

Chas. I. Dawson, Judge.

No exceptions. Chas. G. Middleton, Solicitor for complainant.

July 8-26.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed July 8, 1926

The Clerk will copy for the record on appeal herein the following parts of the record herein, viz.:

1. Bill of complaint.
2. Motion for injunction July 7, 1925.
3. Motion to dismiss July 7, 1925.
4. Order of July 7, 1925.
5. Order overruling motions January 5, 1926.
6. Answer, with date of filing.
7. Opinion filed June 10, 1926.
8. Final decree entered June 25, 1926.

[fol. 118] 9. Order of June 25, 1926, filing assignment of errors, allowing appeal, waiving citation, suspending decree, fixing amount of bond, filing and approving bond.

10. Assignment of errors.
11. Bond.
12. Statement of evidence and order approving and filing same.
13. This præcipe and endorsement by attorney for plaintiff.

Helm Bruce, Bruce & Bullitt, Solicitors for Defendant and Appellant.

Appellee (or plaintiff) does not desire any additional portions of the record copied.

Chas. G. Middleton, Humphrey, Crawford & Middleton, Solicitors for Plaintiff and Appellee.

Clerk's certificate to foregoing transcript omitted in printing.

[fol 119] In the United States Circuit Court of Appeals for the Sixth Circuit

Appearance of counsel, filed July 14, 1926, omitted in printing.

Motion to Advance—Filed October 2, 1926

Appellant moves the Court to advance the above entitled cause for hearing, as a cause taking precedure in this Court under the Judicial Code § 129 as amended by the Act of February 3, 1925, and to set the same for hearing at the beginning of the November session of the Court.

Thos. W. Davis, Helm Bruce, Counsel for Appellant.

Notice of the foregoing motion to be made at the opening of the October Term of Court is hereby accepted and concurred in as to request for advancement.

Chas. G. Middleton, Counsel for Appellee.

October 1, 1926.

[fol. 120] In United States Circuit Court of Appeals

Order Advancing Cause—Filed October 7, 1926

This cause is advanced for hearing and assigned for argument at the November session.

Minute entry of argument and submission November 9, 1926, omitted in printing.

In United States Circuit Court of Appeals

Decree—Filed December 17, 1926

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States

for the Western District of Kentucky, and was argued by counsel.

On Consideration Whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby modified as indicated in the opinion of this Court and the cause is remanded to the Court below for the entry of such modified decree and for further proceedings in accordance therewith. Appellant will recover the costs of this Court.

[fol. 121] In United States Circuit Court of Appeals

Before Denison and Moorman, Circuit Judges, and Hough, District Judge

Opinion—Filed December 17, 1926

Denison, Circuit Judge:

The Standard Oil Company of Kentucky (hereafter called the "Company"), sells oil throughout Florida. It is not a producer. It buys its fuel oil from Tampico, Mexico, and its gasoline, kerosene and lubricating oils from Baton Rouge, Louisiana. These oils are shipped from the point of purchase to Florida by boat across or along the Gulf of Mexico. These interstate or foreign shipments enter Florida at two points,—Port Tampa, about eight miles from the city of Tampa, and the St. John's River Terminal, in the city of Jacksonville. At each of these points the company maintains a group of large tanks, severally used for the different kinds of oil, and into which the oil is pumped from the tank steamers which bring it in. From these tanks the oil is pumped out into the tank cars in which it is shipped to various interior points. Sometimes oil is flowing into and out of the storage tanks,—from steamers to car,—simultaneously; sometimes some oil is held in the tanks as long as sixty days. The question in this case is whether this further shipment, from Port Tampa or Jacksonville to the interior points of consumption or of secondary distribution, continues to be that interstate or foreign commerce in the

course of which the oil comes in, or is predominantly local commerce, and in its nature intrastate. The question arises in this way. The Florida Railroad Commission has fixed rates for the intrastate shipment of these various oils from Port Tampa and Jacksonville to the interior points. The Atlantic Coast Line Railroad Company (hereafter called the "Railway") filed with the Interstate Commerce Commission its proposed rates for these same items of transportation upon the theory that they were interstate or foreign commerce; and there being no objection these rates became, in effect, established by the Interstate Commerce Commission, and properly applicable for all items of transportation that were within the jurisdiction of that [fol. 122] Commission. Thereupon the Company filed a bill in the Court below to enjoin the Railway from continuing to collect these interstate rates, to compel an accounting from the Railway and for a refund of such of these rates as had been received in excess of the Florida domestic schedule. The jurisdiction of the Court below sufficiently rested upon the diverse citizenship of the parties. A decree was made in favor of the Company and the Railway appeals. It is not necessary to decide whether the decree was interlocutory or final; either theory sufficiently sustains the appeal.

We consider, first, the situation at Port Tampa; and severally with regard to the four kinds of oil, the status of which is not necessarily the same,—though all four have two characteristics in common. All enter from outside the state and all are intended for further common carrier shipments,—none for use at Port Tampa.

First, of fuel oil. This is substantially all sold by the Company to various manufacturers,—the ultimate users,—upon annual contracts to supply them with stated quantities or with their needs during the period.[1] The incoming stream from Mexico is brought into the tanks rapidly enough to supply the outgoing demand,—generally in accordance with the predetermined fixed amounts, but

[1] Ninety-five per cent is so sold. That five per cent is sold later may be disregarded, not because five per cent is a negligible fraction (that we do not decide) but because the five per cent was also always destined for further shipment and the ninety-five per cent stamps the whole mass as not intended for miscellaneous public sale, here, there or anywhere.

somewhat varied by the developing fluctuations in that demand. In our judgment this oil travels on a substantially continuous trip from Tampico to the interior points in Florida, and the Port Tampa tanks are a pond or equalizing reservoir which merely accommodates the supply to the outgo and which furnishes essentially nothing but storage in transit.

Upon the question whether, for rate control purposes, commerce is interstate or intrastate, the decisions of the Supreme Court furnish no universal rule; each case has been decided on its facts. The Sabine-Tram case (Texas Co. v. Sabine Tram Co., 227 U. S. 111), is an application of the principle which we think now controlling, and an application which is not easy to distinguish from the [fol. 123] present case. It declares that domestic gathering together of property for the purpose of foreign shipment and sale, must be treated only as an incident of the entire transaction and takes the character of the whole. The flow of commerce in the present case is in the opposite direction, but the principle seems to be wholly analogous. It is suggested that there is distinction in the fact that there the gathering together was only a preparatory incident of the contemplated foreign shipments and sale, while here the contemplated distribution and sale in Florida make up the primary object involved and the bringing in from the outside is the preparatory incident; but we can see no sufficient reason for saying that either part of such transaction is primary and the other incidental. As Justice Holmes said in Davis v. Virginia, 236 U. S. 697, 699, "From the point of view of commerce, the business is one affair." It is as accurate to say that the local distribution in Florida was merely in aid of the Tampico purchase and to provide an outlet for the Mexican wells, as to say the converse; probably neither way of putting it is complete.

We can not say that the mere power of the Company to make a diversion at Port Tampa, or to use the oil there or in the immediate vicinity without any substantial further transportation, furnishes any reason for distinguishing from the Sabine-Tram case; for there Powell and Company had full power and right to send shiploads of the collected lumber up and down the Texas coast instead of sending it across the ocean. We take the controlling thought of

the Sabine-Tram case to be that where there is, both in expectancy and in fact, a clear and established stream of foreign commerce, the intent of the one engaged in that commerce that the items destined therefor are to be considered a part thereof from their origin to their destination, is the thing which stamps the whole transaction as foreign commerce; and this reasoning applies as well to the branches of the tree through which the sap is distributed after passing up the trunk, as to the roots in which it is made ready for the upward passage.

That this intent to make a continuous interstate shipment is the determinative thing, is illustrated by B. & O. Ry. Co. [fol. 124] v. Settle, 260 U. S. 166. The initial trip terminated at Oakley; Settle there took possession of the car and had power to sell it locally, or to reship it as he pleased; but his intent from the beginning had been that the journey should continue to Madisonville, with a temporary stop at Oakley merely long enough to make arrangements for forwarding. When this constant intent was observed, it was thought that the stop at Oakley, and possession there by Settle, and reshipment from there did not interrupt the continuity of the journey. The parallel with the present case seems perfect. Settle's motive, to get a lower rate, can not be the basis of the decision. This motive was lawful, if the law permitted him to tack these two rates. His intent to make a really through shipment, not his reason for this intent, was the vital thing.

Here, the identity of the oil which goes into the tank with that which goes out is not lost. The oil is fungible, each gallon is equal to any other gallon. If 100 barrels were billed from Tampico to the user at an interior point, no one would think that a holding of it on the way in this storage tank for a reasonable time until the user was ready for it, would effect its character as a through shipment. To this view it does not seem material that the users, instead of one concern, are a known and small group, among whom it is from the beginning intended that the shipment should be distributed.

The Stock Yards case (Stafford v. Wallace, 258 U. S. 495) is not a rate case, but the sole question was whether the interstate transportation was finished, so as to end the federal power of supervision. It furnishes another application of the same principle,—that the intent controls.

As to the cattle coming to Chicago from the West, no particular cattle have any particular final destination; it is merely well understood that the mass is to be rearranged and all the items are to travel on somewhere. The ever-present expectation and intent that the cattle are to continue their journey, and that their delay and rearrangement at the stock yards will only make a temporary stop, maintain the interstate character of the commerce throughout this stoppage. Indeed, there is close analogy in the situations. The stock yards, like the storage tanks, have a [fol. 125] limited capacity. They can not overflow, they must not run dry. The stream runs through them.

Adopting the criterion declared in these three cases, as we understand them, we must conclude that the rates given in the schedule approved by the Interstate Commerce Commission are the rates properly applicable to the shipments of fuel oil from Port Tampa to the interior. In addition to these cases, see Southern Pacific v. I. C. C., 219 U. S. 498; Peoples Co. v. Public Service Commission, 270 U. S. 550.

With regard to gasoline and kerosene shipments through Port Tampa, we conclude they must be classified with the fuel oil. The situation is the same with one exception; and this exception, we think, make the case stronger for the interstate theory. The shipments onward from Port Tampa are all to the so-called bulk stations which are maintained by the Company at different interior points. There is therefore from the beginning of the shipment at Baton Rouge, the intent and purpose that the gasoline and kerosene shall all be distributed through Port Tampa to these bulk stations. There is not to be, as with the fuel oil, a distribution among a number of users; the shipments all go to the same consignee, according to its needs in different localities; and since the original purchaser and ultimate consignee are the same person, there is constant community of intent.

It is true that the Port Tampa tanks are filled up when a price advance is anticipated and are allowed to run low when the market prospect is poor; but doubtless so are the bulk station tanks. It is the latter, not the former, which are the Company's points of distribution for public sale. That these intermediate reservoirs adapt themselves to the demand at the end of the contemplated interstate jour-

ney has no tendency to show that there are two successive and separate journeys.

We do not intend to say that these oils,—fuel, gasoline and kerosene,—may not be subject to state taxation at Port Tampa; that question is not involved. The right of the state to tax is affected by some considerations which are less applicable to rate regulation; and the concurrence [fol. 126] in the state of the right to tax and the right to fix transportation rates is not inevitable. (Hanley v. Kansas City Co., 187 U. S. 617, 621; Binderup v. Pathe Exchange, 263 U. S. 291, 311.)

As to these oils so far considered, the title does not pass from the producer to the Company until they are delivered into the Company's tanks at the port of entry; but the passage of title was likewise so delayed as to the cattle in the Stock Yards case and as to the gas in the People's Co. case, supra. Hence, we can not consider this fact as controlling,—if important.

The lubricating oils received at Port Tampa are differently treated and present another question. True, they are mostly shipped along from Port Tampa to Tampa; but that haul is very short and we do not know that any question is made about that rate. At Port Tampa it is pumped directly from the steamers into the tank cars, which go mostly to Tampa. At the Tampa warehouse it is pumped from the tank cars into storage tanks, and then at convenience is put into tank wagons or into barrels or some other small containers in which it is partly sold to the general public and partly sent along to the local filling stations maintained by the Company. If any of it goes in bulk from Tampa to the bulk stations, that does not appear, and would not be controlling in any event. An unstated but small fraction goes in the tank cars directly from Port Tampa to the bulk stations, but, for the reasons to be stated with regard to Jacksonville, this fraction can not be deemed to make a continuous through journey. As to all lubricating oil rehandled at Tampa, we find that by this second halt and handling within the state, by its substantial change of form for future shipment, and by its devotion in its new form, in large part if not wholly, to general public distribution and sale, it loses its status as material in the course of interstate transportation and takes on a predominantly local character. The authorities relied upon by the Com-

pany apply to this transaction, and the differences between the handling of the fuel oil and the treatment of the lubricating oil well illustrate the distinction between what continues to be and what ceases to be interstate traffic. (Pa. Ry. Co. v. Knight, 192 U. S. 21; Chicago, etc., Co. v. Iowa, [fol. 127] 233 U. S. 334; Arkadelphia Co. v. St. Louis, etc., Co., 249 U. S. 134; Southern Pacific v. Arizona, 249 U. S. 472, and Missouri v. Kansas Co., 265 U. S. 298.) The rates established by the Florida Commission are the ones properly applicable to lubricating oil shipments from Port Tampa to the interior and from Tampa to points beyond.

At Jacksonville the situation as to lubricating oils is the same as at Port Tampa and Tampa, except that there seems to be no intermediate haul by a common carrier between the river terminal and the city warehouse.

As to gasoline and kerosene, the proof is that 13% of the amount received into the tanks is used locally at Jacksonville and never gets any further shipment. 13% is a very substantial fraction; it cannot be regarded as negligible. It follows that as to any particular unit of oil coming into the tanks, it cannot be said that there was always an intent for further transportation and for merely temporary stoppage. The one causing the original shipment knew, and therefore intended, that this particular gallon or barrel, or 100 barrels, might stop at Jacksonville or might go on. This uncertainty is inconsistent with that clear intent which, and which only, can carry the original character along into the second stage of the interrupted shipment. If, in the Sabine-Tram case, Powell had been, out of his assembled stock, sending substantial shipments to Texas points, or if Settle, in his case, had been supplying a substantial local demand at Oakley, and sending along to Madisonville what was left,—though much the greater fraction,—the results in those cases seemingly must have been different. We think that the gasoline and the kerosene, like the lubricating oils, should take the local rates from Jacksonville to other Florida points.

As to the Jacksonville fuel oil, the record is obscure and not sufficient for satisfactory determination. If substantially all of it goes forward to other points pursuant to an established and known course of business, it is to be treated like the Port Tampa fuel oil; if according to the

established methods and experience, a substantial part of it ends its journey at Jacksonville, it is to be treated like the other oils at Jacksonville. The parties should pro- [fol. 128] duce further proofs on this point in the Court below. We have no occasion now to deny that the fraction of fuel oil stopping at Jacksonville may be so small that it may be wholly disregarded in determining the through character of this commerce; nor is there necessity for attempting now to decide how small that fraction must be to be so disregarded. If that question arises upon the further proofs, the Court below will decide it.

The recent decisions of the Florida Supreme Court (Florida R. R. Commission v. Atlantic Coast Line and Seaboard Air Line) seem to have been dependent upon a question of pleading; and by the pleadings as construed, the facts that we have thought controlling as to the Port Tampa fuel oil, gasoline and kerosene, were not presented. In Atlantic Coast Line v. Standard Oil, C. C. A. 4, 12 Fed. (2nd) 541, it did not appear that these same controlling facts existed as to Wilmington. Hence, in so far as we reach a result different from that announced in that case, there is no necessary conflict with that Court in our views of the legal principles involved.

The decree below allows interest upon each excess payment from its date. This is in accord with the analogous practice of the Interstate Commerce Commission (in a more doubtful situation) approved by the Supreme Court in Louisville, etc., Co. v. Schloss-Sheffield Co., 269 U. S. 217, 268. The same rule is appropriate to a court recovery.

The decree will be in part affirmed and in part modified as indicated in this opinion, and the case is remanded to the Court below for the entry of such modified decree and for further proceedings in accordance therewith.

Appellant will recover the costs of this court.

[fol. 129] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 130] SUPREME COURT OF THE UNITED STATES

No. 872

ORDER ALLOWING CERTIORARI—Filed March 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 131] SUPREME COURT OF THE UNITED STATES

No. 873

ORDER ALLOWING CERTIORARI—Filed March 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 8[redacted]176

FILED
FEB 2
WM. R. STA[illegible]

Supreme Court of the United States

ATLANTIC COAST LINE RAILROAD COMPANY, Petitioner,

vs.

STANDARD OIL COMPANY OF KENTUCKY, - Respondent.

PETITION FOR WRIT OF CERTIORARI.

ATLANTIC COAST LINE RAILROAD COMPANY,

HELM BRUCE,
THOS. W. DAVIS,
Counsel.

January 12, 1927.

WESTERFIELD-BOOTH CO., INCORPORATED, LOUISVILLE, KY.

Supreme Court of the United States

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner,*

vs.

STANDARD OIL COMPANY OF KENTUCKY, *Respondent.*

Counsel for Respondent, Standard Oil Company of Kentucky, hereby acknowledges receipt of notice of filing the within petition for *certiorari,* with a copy of the petition, printed record and supporting brief, this January 26, 1927, at Louisville, Ky.

CHAS. G. MIDDLETON,
Counsel for Respondent.

Supreme Court of the United States

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner,*

vs.

STANDARD OIL COMPANY OF KENTUCKY, *Respondent.*

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Petitioner, the Atlantic Coast Line Railroad Company, respectfully asks this Court to review on writ of *certiorari* a decree of the United States Circuit Court of Appeals for the Sixth Circuit in *Atlantic Coast Line Railroad Co.* v. *Standard Oil Company of Kentucky,* entered December 17, 1926, as shown by copy of the record therein herewith filed (R. 120). And as grounds for this request says:

The Standard Oil Company of Kentucky, a corporation of *Kentucky,* sued the Atlantic Coast Line Railroad Company, a corporation of *Virginia,* in the District Court of the United States for *Kentucky* (Western District) concerning rates charged in *Florida* for the transportation of petroleum products (fuel oil, gasoline, refined oil and lubricating oil).

Petroleum products are brought *by ships* from *outside* of Florida to Port Tampa on the *west* coast of

Florida, and to Jacksonville on the *east* coast. These products are then further transported from these two ports *by rail* to points in the *interior* of Florida.

The bill alleged that the railroad company (petitioner) charged *interstate* rates for the transportation of these products from the ports to the interior, whereas it should have charged *intrastate* rates, which are lower. It, therefore, prayed for an injunction for the future and an accounting for the past.

The Circuit Court of Appeals for the Sixth Circuit in an elaborate opinion, upon the authority of the *Sabine Tram Company case* (Texas, etc., Ry. Co. v. Sabine Tram Co., 227 U. S. 111), the *Chicago Stock Yards case* (Stafford v. Wallace, 258 U. S. 495), and *Baltimore & Ohio Ry.* v. *Settle* (260 U. S. 166) has held in the case at bar that the rail transportation from *Port Tampa* on the *west* coast of Florida to the interior of the State is but a continuance of the original shipment from Mexico, Louisiana, etc., carrying out the original and continuing intention of the parties, as it existed before the commodities started from their places of origin, and is therefore foreign or interstate commerce and should carry the interstate rates according to the tariff on file with the Commission.

But it has held that the rail transportation to the interior from *Jacksonville* on the *east* coast of Florida, as to gasoline and refined oil, is *intrastate* commerce and therefore should bear the lower intrastate rates.

This distinction in favor of Jacksonville against Port Tampa is based *solely* on the fact that at Jacksonville a *small part,* "about 13 per cent," of the two prod-

ucts mentioned is *used locally at Jacksonville,* and therefore, of course, stops there and does not go on through to the interior of the State. The Court thought this fact differentiated it from the cases above mentioned.

The Supreme Court of Florida, in *Florida Railroad Commission* v. *Atlantic Coast Line R. R. Co.,* and *Seaboard Air Line Ry. Co.,* 109 Sou. 656 (not yet officially reported), being a case *pending in Florida contemporaneously with the case at bar* in Kentucky and involving the very traffic involved in this case, petitioner *being a defendant in both cases and bound by both judgments,* has held that *all of the traffic* involved is intrastate, and has issued a mandamus requiring petitioner and the Seaboard Air Line to put in the intrastate rates on *all of the traffic* in petroleum products going to the interior of the State, whether through Jacksonville or through Port Tampa.

The result of the above mentioned rulings of the Circuit Court of Appeals for the Sixth Circuit in this present case, and of the Supreme Court of Florida in the mandamus case, is the following situation, which we submit should move this Court to grant the writ of *certiorari* requested, to wit:

1. The decision of the Circuit Court of Appeals in the present case requires the charging of one scale of rates (interstate) from Port Tampa to the interior, and a different and lower scale of rates (intrastate) from Jacksonville to the interior, under substantially the same circumstances and conditions:

2. The Supreme Court of Florida having by mandamus ordered petitioner to put in the intrastate rates on *all of the traffic involved,* whether from Port Tampa or from Jacksonville, petitioner is, therefore, in this dilemma:

(a) If it charges *interstate* rates on that part of the commerce which the Court in the case at bar holds to be interstate, and which under that decision it has a right to charge, it will be in contempt of the Supreme Court of Florida;

(b) On the other hand, if it obeys the Supreme Court of Florida and charges *intrastate* rates on that part of the commerce which the Court in the present case holds to be interstate, and for which it has a tariff on file with the Interstate Commerce Commission, it will violate the Interstate Commerce Act and will be subject to heavy penalties, unless it *gives up an adjudicated right* and withdraws its tariff and files another to correspond with intrastate rates.

3. The traffic involved in this commerce is very great, many millions of barrels of petroleum products per year, of enormous value. The railroads of Florida, the oil companies, the different ports and the public are vitally interested in a prompt settlement by this Court of the question involved. A decision by this Court on the nature of this commerce will be controlling on all courts, State and Federal, and will quiet—and is the only thing that will quiet—the great confusion now existing under the present status of the decisions.

We respectfully ask that the writ be allowed.

ATLANTIC COAST LINE RAILROAD COMPANY,

HELM BRUCE,
THOS. W. DAVIS,
Counsel.

CERTIFICATE OF COUNSEL.

I, Helm Bruce, do hereby certify that I am one of the counsel who have had active charge of the suit originating in the United States District Court of Kentucky referred to in the foregoing petition for *certiorari* and shown by the record filed with said petition; that I am familiar with said record; that I have read the foregoing petition; that I believe the statements in the petition to be justified by the record and that in my judgment the petition for *certiorari* should be granted.

HELM BRUCE,
Counsel for Petitioner.

CASES MENTIONED IN PETITION OR BRIEF.

Baltimore & Ohio R. R. v. Settle, 260 U. S. 166.

Florida R. R. Comn. v. Atlantic Coast Line, 109 Sou. 656.

Railroad Comn. v. Worthington, 225 U. S. 101.

Stafford v. Wallace, 258 U. S. 495.

Texas, etc., Ry. Co. v. Sabine Tram Co., 227 U. S. 111.

SUPPORTING BRIEF.

The opinion below (R. 121) has not been reported. The judgment sought to be reviewed was entered December 17, 1926 (R. 120), being a judgment by the Circuit Court of Appeals for the Sixth Circuit. The jurisdiction of this Court to review the same is conferred by Federal Judicial Code, §240a, as amended.

Assignment of Errors: The Court erred in holding that the transportation of gasoline and refined oil from Mexico, Florida and other places outside of Florida through Jacksonville, Florida, to the interior of the State is, as to the transportation from Jacksonville to the interior, intrastate commerce.

It appears in the proof (R. 80), though not in the pleadings, that "about 13 per cent" of the refined oil and gasoline coming to Jacksonville is used at Jacksonville itself, although admittedly 87 per cent goes on through to the interior of the State. The Circuit Court of Appeals thought this fact distinguished the traffic in gasoline and refined oil coming to Jacksonville from the cases it had cited, and under the authority of which it had held that the *same products* coming to *Port Tampa* and thence transported to the interior constituted parts of interstate commerce.

But we call attention to the fact that in the *Chicago Stock Yards case* (Stafford v. Wallace, 258 U. S. 495), one of the very cases relied upon by the Court, it must necessarily have been true that a very substantial part of the cattle which came to the stock yards *stopped in*

Chicago, and were bought and butchered and consumed in that great city with its millions of inhabitants. But notwithstanding this manifest fact, the Court held that "the stock yards are not a place of rest or final destination. * * * The stock yards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the west to the east and from one State to another."

Again, in the *Lake Cargo Coal case* (Railroad Commission v. Worthington, 225 U. S. 101), a case of the same class as those cited by the Court in its opinion, it appeared that of the coal shipped from the Ohio mines at the lake cargo rate some of it was "diverted en route and devoted to some other purpose"; and it further appeared that coal was "accumulated in large quantities at Huron and only taken out of the accumulated lots from time to time." These facts were urged upon the Court as showing that the commerce was not interstate commerce. But this Court responded to that suggestion by saying: "It must always be remembered that this 70-cent rate applies solely to such coal *as is in fact placed upon vessels* for carriage to beyond State points" (p. 108).

So in the case at bar. While it is true that a small part of the gasoline and refined oil coming to Jacksonville may stop there, yet it was known before these products started from their places of origin that the great bulk of them was to go on beyond Jacksonville, and the rates involved in this case apply only to the

87 per cent of that traffic *which does in fact* go on through Jacksonville to the interior.

HELM BRUCE,
THOS. W. DAVIS,
Counsel for Petitioner.

FILED
OCT 1 1927
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 176.

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,
vs.
STANDARD OIL COMPANY OF KENTUCKY.

No. 177.

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY,
Petitioner,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY.

BRIEF FOR ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER, IN NO. 176, AND RESPONDENT IN NO. 177.

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Inter-Southern Building,
Louisville, Ky.,

Attorneys for Atlantic Coast Line Railroad Company.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 176.

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,
vs.
STANDARD OIL COMPANY OF KENTUCKY.

No. 177.

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY,
Petitioner,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY.

BRIEF FOR ATLANTIC COAST LINE RAILROAD COMPANY, PETITIONER, IN NO. 176, AND RESPONDENT IN NO. 177.

OFFICIAL REPORT.

The case below is reported in 16 Fed. (2d) 441.

JURISDICTION.

The judgment sought to be reviewed was entered December 17, 1926 (R. 132), by the Circuit Court of Appeals for the Sixth Circuit. Petition for Certiorari

was granted March 21, 1927. The jurisdiction of this Court to review the decree below is conferred by Judicial Code, Sec. 240, as amended.

The question to be decided in this case is whether rates on petroleum products coming into Port Tampa, on the West Coast of Florida, and Jacksonville, on the East Coast of Florida, from Mexican and Louisiana ports, to be there transported by rail to interior points in Florida, is foreign commerce and whether on the rail transportation from said ports to interior points interstate, or intrastate rates are applicable.

STATEMENT OF CASE.

Throughout this brief the Standard Oil Company of Kentucky, Respondent in No. 176 and Petitioner in No. 177, will be styled as "Plaintiff," and the Atlantic Coast Line Railroad Company, Petitioner in No. 176 and Respondent in No. 177, will be styled as "Defendant," and wherever italics are placed in the brief they are ours unless otherwise noted.

Standard Oil Company of Kentucky brought a bill in equity in the United States District Court for the Western District of Kentucky against the Atlantic Coast Line Railroad Company, seeking an injunction to restrain defendant from charging interstate rates on petroleum products shipped from Mexican and Louisiana ports to Port Tampa, on the West coast of Florida, and Jacksonville, on the East coast of Florida, destined, as claimed by defendant, to interior Florida points, and for an accounting for overcharge (R. 2); and alleges that it is engaged in the business of buying and selling gasoline, refined oil, lubricating oil and other petroleum products which it purchases and sells to its customers in Florida, which, with the exception

of lubricating oil, is brought into Port Tampa and Jacksonville in steamers owned or chartered by sellers, which products are pumped direct from the steamer into storage tanks owned by plaintiff at said ports (R. 2). That the lubricating oil brought into Port Tampa, however, is pumped direct from steamers into tank cars and transported by rail in said tank cars direct to Tampa, Florida, or to its bulk stations hereinafter described (R. 5). That plaintiff maintains at a number of other points in Florida bulk stations, where it has storage tanks, and from which it delivers by tank wagon to customers in Florida. It has also service stations and customers which it supplies direct from bulk stations by tank wagon, but occasionally by tank car from Port Tampa (R. 4). That all shipments from Port Tampa are made to Florida points and that it does not know when it receives gasoline in its storage tanks, where or to whom it will be eventually sold, but does know it will go to some place and be sold to some one in Florida (R. 4). That lubricating oil is pumped direct from vessels to tank cars and shipped to Tampa, or to plaintiff's bulk stations at interior points (R. 5). That fuel oil is shipped to Port Tampa and unloaded in the same manner as gasoline, *but that ninety-five per cent of fuel oil is sold to customers in Florida on contracts made before the oil arrives at Port Tampa, and practically all contracts for fuel oil are made for one year* (R. 5).

That at Jacksonville, gasoline, refined oil and fuel oil is handled and sold exactly the same way as that received at Port Tampa, except some is shipped to Georgia and Alabama (Bill of complaint Par. Fourth (e), (f), (g), R. 6 and 7).

That lubricating oil is received at Jacksonville by tank steamers, pumped into tank cars and taken to

King's Road, about two miles across Jacksonville, pumped into storage tanks and about ninety per cent is barrelled at King's Road and shipped out to customers in barrels (R. 7). Plaintiff also alleges that it receives some lubricating oil at Jacksonville by rail in tank cars, and occasionally some lubricating oil and greases in barrels and cases, all of which is stored at King's Road to await orders in varying amounts from customers. It also alleges that it owns no tank cars but leases them from tank car companies or railroads. That it ships only carload lots from Port Tampa, but from Jacksonville ships both carload and less than carload lots (R. 7). Plaintiff alleges that up to June 15, 1923, the defendant charged intrastate rates on such products, but that on that date it began applying interstate rates, and contends that the commerce is intrastate and intrastate rates should apply, and asks for a judgment of $63,000.00 for the difference between the rates paid during the time alleged in the complaint (R. 8).

The case was heard before the District Judge and the following facts were brought out, all of the witnesses being witnesses for the plaintiff except the witness J. W. Morris, whose testimony appears at page 127, and the facts stated below are the facts shown by plaintiff's witnesses from the record, except where witness Morris' testimony is specifically called to the attention of the Court:

The Standard Oil Company of Kentucky purchases its crude oil from the Standard Oil Company of New Jersey, and a typical contract is shown (R. 55) for one million barrels of Mexican crude oil. This contract calls *for delivery in cargo lots over a period of one year from January 1, 1925, in fairly even monthly quantities,* and provides for the shipment and method

of paying. The capacity of the average steamer is 45,000 barrels. The storage capacity for gasoline at Port Tampa is 104,505 barrels, and at St. Johns River Terminal, Jacksonville, 162,500 barrels, and the approximate sale of gasoline from Port Tampa and Jacksonville for the first six months of 1925 was 93,100 barrels per month (R. 59). Plaintiff placed in evidence certain exhibits (R. 63 to 89, inclusive, and 90 to 109, inclusive), showing petroleum products received at Port Tampa and Jacksonville and each product shipped at these two places, but the totals are not shown on these exhibits. We give the tabulated figures below for gasoline and heavy fuel oil, both for the year 1925 and the total figures from July 1, 1923, to December 31, 1925. The figures from Port Tampa for the year 1925 are taken from Plaintiff's Exhibit No. 4 (R. 63), and from Jacksonville from plaintiff's Exhibit No. 5 (R. 77), and for the total from 1923 to 1925, inclusive, the total amount shown for 1925 plus the total shown on plaintiff's statements beginning on R. 94:

GASOLINE:

Received at Port Tampa 1925	647,268	bbls.
Shipped at Port Tampa 1925	695,419	"
Excess shipped over receipts, 7% (Plaintiff's Exhibit No. 4, R. 63)	48,151	"
Received at Jacksonville 1925	927,577	bbls.
Shipped at Jacksonville 1925	930,133	"
Excess shipped over receipts 2/10 of 1% (Plaintiff's Exhibit No. 5, R. 77)	2,556	"
Received at Port Tampa July 1st, 1923, to December 31st, 1925	1,302,312	bbls.
Shipped at Port Tampa July 1st, 1923, to December 31st, 1925	1,309,969	"
Excess shipped over receipts ½ of 1% (Plaintiff's Exhibit No. 4 R. 63 and statement R. 96)	7,657	"
Received at Jacksonville July 1st, 1923, to December 31st, 1925	1,936,271	bbls.

Shipped at Jacksonville July 1st, 1925, to December 31st, 1925	3,925,650	bbls.
Excess receipts over shipments 7/10 of 1% (Plaintiff's Exhibit No. 5, R. 77 and Statement E, 106)	14,823	bbls.

HEAVY FUEL OIL:

Received at Fort Tampa 1925	947,803	bbls.
Shipped at Fort Tampa 1925	905,822	bbls.
Excess shipped over receipts 4.4% (Plaintiff's Exhibit No. 4, R. 66)	41,981	bbls.
Received at Jacksonville 1925	1,438,190	bbls.
Shipped at Jacksonville 1925	1,402,256	bbls.
Excess shipped over receipts 2.7% (Plaintiff's Exhibit No. 3, R. 70)	35,933	bbls.
Received at Fort Tampa July 1st, 1925, to December 31st, 1925	1,071,903	bbls.
Shipped at Fort Tampa July 1st, 1925, to December 31st, 1925	1,030,347	bbls.
Excess shipped over receipts 4.1%	41,556	bbls.
Received at Jacksonville July 1st, 1925, to December 31st, 1925	1,771,598	bbls.
Shipped at Jacksonville July 1st, 1925, to December 31st, 1925	1,813,795	bbls.
Excess shipped over receipts 2.4% (Plaintiff's Exhibit No. 6, R. 79 and Statement E, 106)	37,807	bbls.

We give below statement of total amount of receipts and shipments of fire proof oil, or kerosene, from July 1, 1925, to December 31, 1925, as taken from plaintiff's exhibits:

PORT TAMPA:

Received	995,747	bbls.
Shipped	976,206	bbls.
Excess received over shipments 2% (Statement E, 96)	19,541	bbls.

JACKSONVILLE:

Received	897,183	bbls.
Shipped	871,966	bbls.
Excess received over shipments, 2.8% (Plaintiff's Exhibit No. 2, R. 76 and Statement E, 106)	25,216	bbls.

In order that the Court may see the regularity of the shipments of fire proof oil, or kerosene, we show in barrels the monthly receipts and shipments for the year 1925, as taken from Plaintiff's Exhibit No. 4, R. 63 and Plaintiff's Exhibit No. 5, R. 77.

	PORT TAMPA		JACKSONVILLE	
	Received	Shipped	Received	Shipped
January	—	6,780	13,393	13,413
February	6,877	6,847	10,197	13,054
March	10,054	9,394	10,508	16,398
April	7,861	10,274	16,654	9,950
May	7,773	13,087	10,984	10,954
June	—	6,370	16,654	10,730
July	5,389	7,861	13,981	6,382
August	13,989	7,808	—	10,253
September	—	13,250	13,250	13,250
October	12,216	6,394	13,397	16,794
November	7,913	16,213	16,394	16,861
December	16,859	16,677	12,501	12,980
	109,945	115,994	167,981	170,813

Barrels on hand in tanks—Port Tampa:
December 31st, 1924 ..... 10,700 (R. 63)
December 31st, 1925 ..... 3,660 (R. 63)
Barrels on hand in tanks—Jacksonville:
December 31st, 1924 ..... 13,500 (R. 77)
December 31st, 1925 ..... 1,050 (R. 78)

There is some difference in the method of handling these oils by the plaintiff at Port Tampa, *but there is one fact which is common to all of the products, and that is that none of them are used at Port Tampa*, the point at which they enter Florida, *and they all pass on through Port Tampa to other points in the interior of the state and this fact is known before the products are shipped into the state.* The plaintiff's chief witness, Mr. W. G. Violet, its Vice-President, testified: (R. 112): "*Some of these oils that come into Port Tampa are sold there. It is my understanding that it is all destined to other points in Florida.*" This testimony refers to all of the oil and was not limited or restricted

to any particular product or class of oil. Mr. Violet further testified that lubricating oil was pumped direct from ship into tank cars, for the reason that plaintiff has no storage at Port Tampa for lubricating oil. After it is pumped into tank cars most of it is shipped to Tampa, Florida (R. 60). Lubricating oils come to Jacksonville in the same manner as to Tampa but instead of being pumped into tank cars is pumped into storage tanks located on the St. Johns River Terminal and there reloaded or sent to Jacksonville or other stations. King's Road station at Jacksonville is plaintiff's marketing station for lubricating oil for Jacksonville and immediate vicinity, where they operate their trucks, have a warehouse and fill barrels, and the lubricating oil at King's Road plant is pumped from the tank cars into storage tanks the same as at Tampa and then distributed to its customers by tanks, trucks or in barrels. No barrelling is done at St. Johns River Terminal, *and lubricating oil is purchased under the same character of contract as gasoline at the primary points.* Plaintiff has in Florida 123 bulk stations at which it has small storage tanks, pumps, agents and certain facilities to sell it, together with 365 drive-in service stations and 5,000 gasoline dealers, to whom the gasoline is delivered by tank wagon. The bulk and service stations, in the majority of cases, get their supplies from Jacksonville or Port Tampa in tank cars (R. 62). He further testifies (R. 111) that the 123 bulk stations in Florida are at different points scattered over the state *and more than ninety per cent of this gas received at those points goes to its bulk stations.* All bulk stations it has *storage tanks* for certain grades, a pump house, underground facilities and *delivery* facilities. Its wagons operate out of these bulk stations in *making*

deliveries to customers. All tank wagons are supplied from bulk stations. Plaintiff has some carload customers, that is, tank car service. Most of the tank car shipments to customers come from Port Tampa and Jacksonville. The tank car customers vary in number *but are not many.* Most people buy direct from the stations. It has certain grades of lubricating oil *which it sells from the bulk stations.* Fuel oil is sold largely in the cities and towns and largely in towns in the Bone Valley District. *This fuel oil is sold largely on contracts made ahead of time with fuel oil customers* and they are supplied by plaintiff when they want it. He further testified *that ninety per cent or more of refined oil goes to the bulk stations.* At page 112 he says, "*None of these oils that come into Port Tampa are sold there. It is my understanding it is all destined to other points in Florida.* When lubricating oil is brought into Port Tampa and is shipped *it is pumped through pipe lines direct from the ship into cars—a whole train load—and carried away.* Fuel oil goes into fuel tanks and then is repumped from the tank into tank cars. Very little fuel oil goes to bulk stations" * * *. Referring to the Standard Oil Company of Louisiana, from whom it purchases oils, except fuel oil, he says (R. 112): "Sometimes they are delivering to us from three boats and at other times from only one. The oil we get from Mexico is bought from the Standard Oil Company of New Jersey. We do not charter the boat that brings it, it is bought by us at a price delivered. The only oil we get from there is a heavy fuel oil and this oil is sold to various cities and towns and to manufacturing industries down in the Bone Valley District." This Bone Valley District is about 60 miles Southeast of Tampa (R. 112). (The

record shows 60 miles Southeast of Jacksonville but this is an error.) "The tank cars are leased from the Union Tank Company. The railroads have no tank cars. *Port Tampa is simply an agency.*" (R. 112 and 113.) Plaintiff receives at its home office in Louisville, Kentucky, weekly inventories from its Jacksonville manager, showing the stock in storage tanks at Port Tampa, and from the information given of these inventories it calculates what supplies should be ordered for future requirements, taking into consideration market conditions to indicate whether it is advisable to increase or decrease the stock. Orders are then placed with the Standard Oil Company of Louisiana by plaintiff, designating the approximate time when delivery is to be made. The Louisiana Company acknowledges receipt of that order and shipments are made (R. 48). On pages 49 and 50 of the record is shown a typical copy of an order and of an acknowledgment.

Mr. Arthur M. Stephens, plaintiff's Traffic Manager, testified (R. 114) and placed in evidence a contract (Plaintiff's Exhibit No. 6) between it and the Union Tank Car Company for tank cars. This contract, Section 1 (R. 115) provides *for such cars as may be necessary for* the transportation of plaintiff's products. In Section 4 of the contract (R. 116), after providing for certain charges for the use of the cars, it provides: "In addition to the above charges to be received by the Car Company, any and all mileage allowed by the railroads *under the tariffs filed by them with the Interstate Commerce Commission* shall be collected and retained by the Car Company." Port Tampa is 10 or 11 miles from Tampa and *the rate from Port Tampa is a tariff rate*, as Port Tampa is not in the same switching district as Tampa (R. 120).

Mr. W. W. Zachary, plaintiff's District Manager testified (R. 120) "There are six or seven men employed at Port Tampa. About the only other equipment there besides the tanks are the pipe lines. *There is no office there; only a telephone station. The equipment at St. Johns River Terminal is very much the same* and about the same number of men are employed there." He placed in evidence plaintiff's Exhibit No. 7 (R. 121), which is the contract dated the 31st of October, 1924, between the plaintiff and the Florida Phosphate & Mining Company, calling for the sale to the latter of *50,000 barrels* of Mexican fuel oil *for delivery during the period of twelve months from November 15th, 1924.* Section 1 of this contract provides that the oil is to be used exclusively in the plant of the buyer at Royster, Florida, and must not be resold by the buyer. Section 2 provides that *the oil shall be received at the rate of approximately 4000 barrels per month.* Section 4 provides that the buyer shall pay the *import tax*, if any hereafter imposed by the United States. And in Section 5 it is provided that the buyer shall also pay the Mexican Government tax if it should be increased over 10 cents per barrel, and if decreased it is to receive the benefit thereof. Mr. Zachary testified (R. 123) "The fuel oil goes to the Bone Valley District and a great deal of it goes down on the East Coast, around Orlando and Lakeland and Deland and the middle of the state. *The rest of this is sold en route before it comes into the State.* Some of it is held subject to current demand, and there is no segregation between the two classes. It all goes into the same tank and comes out of the same tank. When a car-load comes in we do not know where it is going or when it is going. The deliveries under these contracts are

very irregular. They are requirement contracts—very largely so treated by both seller and buyer. * * * It is necessary for us to have a large storage in handling fuel oil. Our customers require it and I had some of them, *when I was trying to negotiate contracts,* ask how much storage facilities we have at our point of supply. They have to know if there is an adequate storage." Again, he states (R. 123) "At bulk stations we have tanks for storage of gasoline and refined oil and at points we have storage tanks for lubricating oil, and we have warehouses and truck tanks used for delivery, and we have tank wagons for gasoline and some for lubricating oil." He says (R. 124), referring to the selling of petroleum products: "*None of it is brought through Port Tampa or St. Johns River Terminal—no sales at all made there, or very little. Our fuel oil contract calls for a certain amount of barrels per month to be shipped each month as long as the contract lasts.* These estimates vary considerable. *But our custom is to be called on for a stipulated amount each month. I do not think it would be possible to conduct the business we have in Florida without these storage tank facilities. You could not get enough cars to handle the contracts—we could not hold the cars. It would be entirely impracticable to try to do business without a large reserve storage.*"

All of the above were plaintiff's witnesses. Mr. J. W. Morris, witness for the defendant, and its General Agent at Port Tampa for 22 years, stated that he was familiar with the methods of the oil companies at Port Tampa and, in general, he knew what was done at Tampa. That the Standard Oil Company, the Gulf Refining Company, the Seaboard Oil Company and the National Oil Company were all located at Port Tampa

and the Mexican Petroleum and Texas Oil Companies were at Tampa. That the products of all of these oil companies were distributed in the same way as the Standard Oil Company of Kentucky (R. 128). He says (R. 128): "*The flow of oil through the tanks is practically continuous. They are loading tank cars through the receiving tanks continuously throughout every day in the year, except Sundays.* * * * *Frequently oil is coming out of tanks at the same time it is being pumped into them by the ship.* I do not know who pays for the pumping. *The Standard Oil Company pays me the wharfage*, which charge is for the products passing over the wharf and includes the berth to accomodate the ship and wharf over which it passes." On cross-examination by plaintiff's Counsel (R. 130), he says: "I told you the wharfage is separate. It may be a part of the lease, but the rental of the land does not cover the wharfage. *The wharfage is governed by the regular tariff rates filed with the Interstate Commerce Commission.* * * * *There is no consumption of oil at Port Tampa and there is no oil produced in Florida.*"

The District Court of Kentucky held that all of the commerce from the two ports of Port Tampa and Jacksonville to interior Florida points was intrastate commerce and, therefore, intrastate rates should be charged. The Circuit Court of Appeals held that the shipments of fuel oil, gasoline and kerosene, which is denominated "fire proof oil" in the record, from Port Tampa to interior points were simply a continuation of the shipments from Mexican and Louisiana ports and were, therefore, foreign and interstate commerce, and that the rates approved by the Interstate Commerce Commission were applicable from Port Tampa

to the interior (R. 137-138); but as to lubricating oil rehandled at Tampa, it loses its status in the course of interstate transportation and takes on a predominant local character and that the rates established by the Florida Railroad Commission (that is, intrastate rates) are the ones properly applicable to lubricating oil shipments from Port Tampa to the interior and from Tampa to points beyond (R. 138-139). And as to the shipments through Jacksonville, gasoline, kerosene and lubricating oils should take the local or intrastate rates from Jacksonville to Florida points (R. 139). As to fuel oil from Jacksonville, the Court said:

> "The record is obscure and not sufficient for satisfactory determination. If substantially all of it goes forward to other points, pursuant to an established and known course of business, it is to be treated like the Port Tampa fuel oil; if according to the established methods and experience, a substantial part of it ends its journey at Jacksonville it is to be treated like the other oils at Jacksonville. The parties should produce further proofs on this point in the court below. We have no occasion now to deny that the fraction of fuel oil stopping at Jacksonville may be so small that it may be wholly disregarded in determining the through character of this commerce; nor is there necessity for attempting now to decide how small that fraction must be to be so disregarded. If that question arises upon the further proofs the court below will decide it" (R. 139-140).

The Supreme Court of Florida, in *Florida Railroad Commission v. Atlantic Coast Line Railroad Company* (this defendant) *and Seaboard Air Line Railway Com-*

pany, 109 So. 656, not yet officially reported, which was a case pending in Florida contemporaneously with the case at bar and involving the very same traffic involved in this case, has held that all of the traffic from Port Tampa and Jacksonville is intrastate commerce and has enjoined this defendant and the Seaboard Air Line Railway Company from charging other than intrastate rates. The decision of the Florida Supreme Court was August 10th, 1926. A stay bond was granted in that case and this Court granted to the defendants in that case, of which this defendant was one, a *certiorari* on March 21st, 1927, so that the whole question is now before this Court for determination. However, in the case decided by the Florida Supreme Court there was no testimony taken and the decision went off upon a question of pleadings.

ASSIGNMENT OF ERROR.

The Court erred in holding that the transportation of gasoline and refined and lubricating oils from Mexico and Louisiana and other points outside of Florida through Jacksonville to the interior points, is intrastate commerce; and in holding that the transportation of lubricating oil from Port Tampa and Tampa to interior points is intrastate commerce; the Court below having held that the transportation of gasoline, refined and fuel oil from Port Tampa to interior points was governed by interstate rates.

RATES TO BE CHARGED AS RESULT OF DECISION OF SIXTH CIRCUIT COURT OF APPEALS:

FROM PORT TAMPA

Commodity	*Rate*
Fuel Oil	Interstate
Gasoline	Interstate
Kerosene or Fire Proof Oil	Interstate
Lubricating Oil	Intrastate

FROM JACKSONVILLE

Commodity	*Rate*
Gasoline	Intrastate
Kerosene or Fire Proof Oil	Intrastate
Lubricating Oil	Intrastate
Fuel Oil	Undetermined

I

POINTS AND AUTHORITIES

THE APPLICATION OF THE RATES DEPENDS UPON THE ESSENTIAL CHARACTER OF THE COMMERCE AND NOT UPON ITS ACCIDENTS OR ISOLATED INCIDENTS. THE COMMERCE IS INTERSTATE AND FOREIGN AND, THEREFORE, ONLY INTERSTATE RATES CAN BE APPLIED.

A

THE ACTS OF PLAINTIFF, STANDARD OIL COMPANY, AND ITS CUSTOMERS, IN MAKING YEARLY CONTRACTS FOR PETROLEUM PRODUCTS TO BE DELIVERED AT INTERIOR POINTS IN FLORIDA, OF THEMSELVES, CONSTITUTE INTERSTATE COMMERCE.

Butler Bros. Shoe Co. v. United States Rubber Company, (C. C. A.) 156 Fed. 1,

International Text Book Co. v. Pigg, 217 U. S. 91, 107,
Flanagan v. Federal Coal Co., 267 U. S. 222,
Spalding & Bros. v. Edwards, 262 U. S. 66,
Lemke v. Farmers Grain Co., 258 U. S. 50,
Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282,
Shafer v. Farmers Grain Co., 268 U. S. 189.

B

THE QUESTION OF WHERE TITLE PASSES DOES NOT DETERMINE THE RATE, AND IS OF NO MATERIALITY, BUT THE INTENTION OF THE PARTIES, AS SHOWN THROUGHOUT THEIR COURSE OF BUSINESS, GOVERNS.

Penn. R. R. v. Clark Bros. Coal Co., 258 U. S. 456,
Stafford v. Wallace, 258 U. S. 495,
T. & N. O. Ry. Co. v. Sabine Tram Co., 227 U. S. 112,
Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498,
Swift & Co. v. United States, 196 U. S. 375,
B. & O. S. W. R. R. Co. v. Settle, 260 U. S. 166.

II

THE MOVEMENT OF LUBRICATING OIL FROM PORT TAMPA, AND OF LUBRICATING OIL, GASOLINE AND KEROSENE FROM JACKSONVILLE, ARE BOTH INTERSTATE COMMERCE AND THE REASONING OF THE CIRCUIT COURT OF APPEALS TO THE CONTRARY IS ERRONEOUS, BECAUSE IT MAKES THE CHARACTER OF THOSE MOVEMENTS TO THE INTERIOR DEPEND NOT UPON THEIR INTRINSIC NATURE BUT UPON THE AMOUNT OF THE SMALL PERCENTAGE SOLD LOCALLY.

Western Oil Refining Co. v. Lipscomb, 244 U. S. 346,
Railroad Commission v. Worthington, 225 U. S. 101,
Peoples Natural Gas Co. v. Public Service Commission of Pennsylvania, 270 U. S. 550,
Binderup v. Pathe Exchange, 263 U. S. 291,
Douglas v. Southern Ry. Co., 216 Ill. App. 148-151.

III

DECISIONS OF THE INTERSTATE COMMERCE COMMISSION

Tampa Fuel Co. v. Atlantic Coast Line R. R. Co., 43 I. C. C. 231,
International Agricultural Corp. v. Director General, 60 I. C. C. 726,
Alexander Grocery Co. v. Beaumont Sour Lake & Western Ry. Co., 104 I. C. C. 155.

IV

CASES RELIED UPON BY THE OIL COMPANY DISTINGUISHED

Railroad Commission v. Worthington, 225 U. S. 107,
Texas, etc. R. R. Co. v. Sabine Tram Co., 227 U. S. 112,
Binderup v. Pathe Exchange, 263 U. S. 291,
Stafford v. Wallace, 258 U. S. 525,
Hanley v. Kansas City Southern Ry., 187 U. S. 617,
Lemke v. Farmers Grain Co., 258 U. S. 50,
Texas Transport & Terminal Co. v. City of New Orleans, 264 U. S. 150,
Swift & Co. v. United States, 196 U. S. 375,
Addystone Pipe & Steel Co. v. United States, 175 U. S. 211,

Sonneborn v. Keeling, 262 U. S. 506,
Penn. R. R. v. Clark Bros., 238 U. S. 506,
Southern Pac. Co. v. Arizona, 249 U. S. 472,
Arkadelphia Milling Co. v. S. L. & S. W. Ry., 249 U. S. 134,
Penn. R. R. v. Knight ,192 U. S. 21,
Gulf, Colorado & S. F. Ry., v. Texas, 204 U. S. 403.

V

OIL CASES FROM NORTH CAROLINA AND FLORIDA

Atlantic Coast Line R. R. Co. v. Standard Oil Co., 12 Fed. (2d) 541,
State v. Seaboard Air Line Ry. and Atlantic Coast Line R. R. Co., 109 Sou. 656,
Hamilton Shoe Co. v. Wolff, 240 U. S. 258,
Hughes Bros. Timber Co. v. State of Minnesota, U. S. (Decided November 23rd, 1926, and not yet officially reported).

ARGUMENT.

I.

THE APPLICATION OF THE RATES DEPENDS UPON THE ESSENTIAL CHARACTER OF THE COMMERCE AND NOT UPON ITS ACCIDENTS OR ISOLATED INCIDENTS. THE COMMERCE IS INTERSTATE AND FOREIGN AND, THEREFORE, ONLY INTERSTATE RATE CAN BE APPLIED.

It must be borne in mind at the outset of this case that there are four different classes of commodities handled, to wit, gasoline, the bulk of which goes to the plaintiff's own stations; refined oil, which also goes to

its own stations; fuel oil, the majority of which goes to the phosphate mines in Bone Valley District and the other to industrial plants for fuel, and lubricating oil; and that the *plaintiff alleges* in its complaint that *gasoline, refined oil and fuel oil is handled and sold exactly the same way at Jacksonville as it is at Port Tampa,* except that some is shipped from Jacksonville to Georgia and Alabama points (R. 6 and 7). It was for *that reason,* therefore, that the testimony in this case deals largely with Port Tampa.

Port Tampa is on the West coast of Florida and Jacksonville is on the East coast of Florida, and the record shows, from the statement already made of the case, that either Port Tampa or Jacksonville is used by the plaintiff according to which port is to its best advantage to ship from. The products, except fuel oil, are not sold from Jacksonville or Port Tampa, but are sold from the bulk or service stations, fuel oil being sold on yearly contracts. None of them are sold at Port Tampa, and, apparently , only 13 per cent of gasoline and kerosene is sold at Jacksonville. They, therefore, all pass through Port Tampa and Jacksonville to other points in the interior of the state. As said by Mr. Violet, Vice-President, "*None of these oils that come into Port Tampa are sold there. It is my understanding that it is all destined to other points in Florida*" (R. 112). So, therefore, it is a known fact, as shown by this testimony, that when the oil starts from points of origin in Mexico or Louisiana its destination is not at these ports but is to interior points in Florida. The exhibits filed by the plaintiff and defendant and the charts and graphs which we have placed in this brief show a continuous uninterrupted flow of oil through these ports to the interior bulk stations and

to customers in other parts of Florida. It also shows that this has been the custom throughout the period testified to by the witnesses. The bill of complaint itself states that 95 per cent of the fuel oil involved is sold by the plaintiff to its customers in the interior of Florida on contracts made before the oil is ever received at Port Tampa or at Jacksonville, and that these contracts are made for a year, to be shipped in equal monthly quantities (R. 121). Likewise, the plaintiff makes a yearly contract with the Standard Oil Company of New Jersey for its supplies by the year, deliveries to be made in cargo lots in fairly even monthly quantities (R. 55). And in order to keep the oil flowing from its bulk stations to its customers at interior points in Florida, it has a contract with the Union Tank Car Company (Plaintiff's Exhibit No. 6, R. 114), by which the Tank Car Company leases to the plaintiff "*such tank cars of the Car Company as may be necessary for the transportation of the oil company's products.*" Under this contract the Oil Company agrees to pay demurrage charges "as provided for in the various railroad tariffs filed with the Interstate Commerce Commission" (R. 118). In the contract which it makes with the Standard Oil Company of New Jersey it agrees to furnish it a safe berth for its steamers to discharge at Port Tampa, Key West or Jacksonville, and according to the witness Morris, it pays to this defendant *wharfage governed by the regular tariff rates filed with the Interstate Commerce Commission* (R. 130). In its contract that it makes for the sale of fuel oil it provides that the oil must be used exclusively by the buyer and not be resold and that the *buyer shall order and receive a monthly proportion of the entire contract* (R. 121). Payment is

to be made by the buyer monthly for the oil delivered. *Buyer shall pay any import tax, if one shall hereafter be imposed on oil by the Mexican Government, over and above 19 cents per barrel; such increase shall be paid by buyer on all deliveries under this contract,* and should there be a decline the buyer shall receive the benefit thereof (Section 5 of Contract, R. 122). This, taken in connection with the allegation of the complaint that 95 per cent of this fuel oil is sold to purchasers on contracts made before the oil comes into Port Tampa and Jacksonville on contracts for a year, clearly indicates the *intention of the plaintiff* in this case of *selling oil* purchased from Mexico *to interior points in Florida and shipping it through monthly.*

A.

THE ACTS OF PLAINTIFF, STANDARD OIL COMPANY, AND THEIR CUSTOMERS IN MAKING YEARLY CONTRACTS FOR PETROLEUM PRODUCTS TO BE DELIVERED AT INTERIOR POINTS IN FLORIDA, OF THEMSELVES, CONSTITUTE INTERSTATE COMMERCE.

The *acts of the oil companies and of their customers* at interior points in Florida *in making contracts for yearly* supplies to be obtained from Mexico, or other points outside of Florida, in and of themselves *constitute foreign and interstate commerce*, for all of the parties must have known at the time of the making of the contracts that the oil must necessarily move in foreign and interstate commerce in order that delivery may be effected at such interior points in Florida.

Flanagan v. Federal Coal Co., 267 U. S. 222.
Spalding & Bros. v. Edwards, 262 U. S. 66.
Lemke v. Farmers Grain Co., 258 U. S. 50.
Dahnke Walker Milling Co. v. Bondurant, 257 U. S. 282.
Shafer v. Farmers Grain Co., 268 U. S. 189.
Butler Bros. Shoe Co. v. U. S. Rubber Co. (*C. C. A.*), 156 Fed. 1.
International Text Book Co. v. Pigg, 217 U. S. 91, 107.

In *Butler Bros. Shoe Co. v. United States Rubber Co., supra*, the Eighth Circuit Court of Appeals in an opinion by Circuit Judge Sanborn, with whom sat Circuit Judge Van Deventer and District Judge Phillips, in discussing whether contracts in the suit were transactions of interstate commerce, laid down the following definition of what acts are included in interstate commerce:

> "A sale is not the test of interstate commerce. All sales of sound articles of commerce, which necessitate the transportation of the goods sold from one state to another are interstate commerce; but all interstate commerce is not sales of goods. Importation into one state from another is the indispensible element, the test, of interstate commerce; *and every negotiation, contract, trade, and dealing between citizens of different states, which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce.* 'Since the case of Gibbons v. Ogden, 9 Wheat,' said Chief Justice Waite in Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 8, 'it has never been doubted that commercial intercourse is an element of commerce which comes within the regulating power of Congress.' "

This definition was approved by this Court in *International Text Book Company v. Pigg*, 217 U. S. 91, 107, where the Court, speaking through Mr. Justice Harlan, said:

> "If intercourse between persons in different States by means of telegraphic messages conveying intelligence or information is commerce among the States, which no State may directly burden or unnecessarily encumber, we cannot doubt that intercourse or communication between persons in different States, by means of correspondence through the mails, is commerce among the States within the meaning of the Constitution, especially where, as here, such intercourse and communication really relates to matters of *regular, continuous business and to the making of contracts and the transportation of books, papers, etc.*, appertaining to such business."

This definition includes in the case at bar, the making of yearly contracts by the oil company for fuel oil to be brought from Mexico to Florida ports and delivered to the phosphate mines and other interior Florida points; it includes the system of reports used by the oil company to ascertain the supply of petroleum products on hand, and it includes the means, whether mail, telegraph or telephone, whereby this intelligence is conveyed; the orders or requests from the phosphate mines, the managers of its bulk stations and its other customers for tank car movements from the ports to the interior destinations; the requests of its agents and servants for the movement of tank cars; the making of contracts for the tank cars; the loading of the tank cars at ports, and the unloading at interior points; the billing of the cars for delivery at the interior destinations, all of which acts are parts and parcels of a

regular and continuous course and current of commerce in the sale and movement of the oil from Mexican and Louisiana points to interior points in Florida.

In *Dahnke-Walker Milling Company v. Bondurant, supra,* a milling company in Tennessee bought a crop of wheat from a Kentucky farmer. The transaction of purchase was entirely in Kentucky, the wheat was to be delivered in Kentucky and the money to be paid in Kentucky. Wheat went up in price and Bondurant refused to deliver. The milling company sued him on the contract and he pleaded that the milling company, a corporation, had failed to file with the Secretary of State of Kentucky a statement giving the name of an agent upon whom process could be served and, therefore, the contract was not enforceable under the statute of Kentucky. The Court of Appeals of Kentucky held with the defendant but this Court reversed the judgment. In the opinion of the Court Mr. Justice Van Deventer (page 290) said:

> "The commerce clause of the Constitution, Article 1, Section 8, Clause 3, expressly commits to Congress and impliedly withholds from the several states the power to regulate commerce among the latter. Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states and all the component parts of that intercourse. *Where goods in one state are transported into another for purpose of sale, the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach* their destination, and while they are in the original packages. * * * On the same principle, where goods are purchased in one state for transportation to another, *the commerce includes the purchase quite as much as it does the*

transportation. * * * This has been recognized in many decisions construing the commerce clause. Thus it was said in *Welton v. Missouri*, 91 U. S. 275-280: 'Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities.' In *Kidd v. Pearson*, 128 U. S. 1, 20, it was tersely said: 'Buying and selling and the transportation incidental thereto constitute commerce.' "

On page 292 the Court said:

"It has been the practice of the plaintiff to go into Kentucky to purchase grain to be transported to and used in its mill in Tennessee. On different occasions it had purchased from the defendant,—at one time 13,000 bushels of corn. This contract was made in continuance of that practice, the plaintiff intending to forward the grain to its mill as soon as the delivery was made. In keeping with that purpose the delivery was to be on board the cars of a public carrier. Applying to these facts the principles before stated, we think the transaction was in interstate commerce."

Further, on the same page the Court said:

"The state court also attached some importance to the fact that *after* the grain was delivered on the cars, *the plaintiff might have changed its mind* and have sold the grain at the place of delivery, or have shipped it to another point in Kentucky. *No doubt this was possible, but it also was improbable.* With equal basis it could be said that a shipment of merchandise billed to a point beyond the state of its origin might be halted by the shipper in the exercise of the right of stoppage in transitu before it got out of that state. *The essential character of the transaction as otherwise fixed is not*

changed by a mere possibility of that sort. * * * For these reasons we are of opinion that the transaction was a part of interstate commerce."

In the *Spalding case, supra,* Delgado & Compania, a firm in the City of La Guaira, Venezuela, ordered Scholtz & Company, a commission merchant in New York, to buy for their account a certain number of baseballs and baseball bats, etc., at an agreed price, and to mark the packages in a particular way to indicate the purchasers and their place. Scholtz & Company then sent to Spalding & Company a paper writing dated December 10th, 1918, as follows: "Export order from Scholtz & Company, shipping and commission merchants. Please ship on or before the —— steamer ———. Rush. * * * Please send memorandum invoice at once, so we can apply for license and clear at custom-house." Scholtz & Company instructed Spalding & Company to deliver the package to the A. & C. Navigation Company, an exporting carrier in New York. Spalding & Bros. marked and delivered the goods as directed and were given a receipt by the carrier, which it sent to Scholtz & Company, and which was exchanged by the latter for an export bill of lading in their name dated February 10th, 1919. The goods were transported and delivered in due time to Delgado & Compania. Scholtz & Company paid Spalding & Bros. on February 1st and were paid their commission by Delgado & Compania in ninety days from date of shipment. The Court says (page 68):

"The *transaction,* from start to finish, *was understood and intended* by the plaintiff and Scholtz & Company *to be for the purpose of exporting the goods to Delgado & Compania in Venezuela.* The question is whether the sale was a step in expor-

tation, assuming, as appears to be the fact, that the title passed at the moment when the goods were delivered into the carrier's hands. * * * Articles in course of transportation cannot be taxed. * * * So we return to the question we have stated. To answer it with regard to any transaction we have to fix a point at which, in view of the purpose of the Constitution, the export must be said to begin. * * * In this case, for instance, while the goods were in process of manufacture they were none the less subject to taxation if they were intended for export and made with specific reference to foreign wants. * * * On the other hand, no one would doubt that they were exempt after they had been loaded upon the vessel for Venezuela and the bill of lading issued. It seems to us that the facts recited are closer to the latter than to the former side, and that the export had begun."

The Court further says (page 70):

"*Neither does it matter that the title was in Scholtz & Company, and that, theoretically, they might change their mind and retain the bats and balls for their own use. There was not the slightest probability of any such change and it did not occur.* The purchase by Scholtz & Company was solely for the purpose of Delgado & Compania, and for their account and risk. Theoretical possibilities may be left out of account."

And the Court held that goods were subject to the export tax.

The case of *Lemke v. Farmers Grain Company, supra,* is valuable on account of its application to plaintiff's claim in this case, that it acted as a jobber of oil. There, the Farmers Grain Company, a corporation of North Dakota, was engaged in the business of buying corn from farmers of North Dakota, which it

stored in its elevator and which it subsequently sold to persons in other states. That it was an unusual thing to get an offer from a point within the state. That is just what plaintiff claims it was doing here, buying up oil and selling it out to customers as a jobber. The statute of North Dakota required a license to be obtained by purchasers of grain. The Farmers Grain Company resisted the payment of this license on the ground that it was engaged in interstate commerce and could not be required to pay this license tax. The Court said (page 54):

> "That such course of dealing constitutes interstate commerce there can be no question."

Again, the Court said (page 55):

> "It is true, as appellants contend, that after the wheat was delivered at complainant's elevator or loaded on the cars for shipment it might have been diverted to a local market or sent to a local mill. But such was not the course of business. *The testimony shows that practically all the wheat purchased by the complainant was for shipment to and sold in the Minneapolis market. That was the course of business and fixed and determined the interstate character of the transaction.*"

In the *Flanagan case, supra,* a contract was made August 19th, 1920, which bound plaintiff to deliver, and defendant to accept, approximately 200 cars of Tracy City run of mine coal at $9.00 per ton f.o.b. cars at Tracy City, Tenn., shipments to be approximately 50 cars per month from September 1st to December 31st, payments to be made weekly. The Federal Coal Company *bought to sell again, exactly the same as the plaintiff in this case alleges it does.* It did not receive

the coal itself but gave orders to Flanagan, who took bills of lading from the railroad at Tracy City in the name of the Federal Coal Company *and consigned the coal to that company's customers in other states, as directed.* The company did not usually sell in Tennessee. It broke off this contract because the price of coal went down, and, as it said, its customers refused to keep their bargains in turn. The Court says (page 225):

> "It was understood between the parties that these dealings were steps in sending coal from the mines to purchasers in other states. Very likely the Federal Coal Company might have stopped the coal at Tracy City in Tennessee, but it had no thought of doing so, and Flanagan understood the course of business in which he was expected to co-operate and did co-operate. Therefore, in this matter the parties were engaged in interstate commerce, and the state law even if valid as a tax could not invalidate their contract."

It seems to us that there is no distinction between the case at bar and these cases. It is clearly shown by the testimony that the custom and the course of business thoroughly understood by and between all parties is that petroleum products from Mexican and Louisiana points are bought at those points for delivery, not at Port Tampa or at Jacksonville, but for delivery, in the case of fuel oil, to its customers who have made contracts by the year, and as to the other products, to its bulk and service stations at interior points in Florida and its customers at those points; and that the storage tanks at Port Tampa and Jacksonville are only a temporary reservoir for the transportation through by tank cars to these interior points. In this

connection we must bear in mind that Mr. Violet, Vice-President, testified that more than 90 per cent of this gasoline received at these ports goes to the plaintiff's own bulk stations (R. 111). And the bill of complaint alleges (Paragraph 4, Subsection (d), R. 5), "All of said fuel oil is sold by the complainant within the boundaries of the State of Florida. Approximately 95 per cent of said fuel is sold to customers in Florida *on contracts made before the fuel oil comes to us at Port Tampa. Practically all contracts made by the complainant with its customers for the sale of fuel oil are made for one year.*"

Mr. Zachary testified in regard to these tanks (R. 123): "It is necessary for us to have a large storage in handling fuel oil. Our customers require it and I had some of them, *when I was trying to negotiate contracts*, ask how much storage facilities we had at our point of supply. They have to know if there is an adequate storage." Here, the intention of the parties is clearly, and without contradiction, shown to be for a through movement to interior points and sales made there, for the testimony is uncontradicted that the sales are either made on contracts for the year before the products arrive at the ports or from the bulk and service stations.

B.

THE QUESTION OF WHERE TITLE PASSES DOES NOT DETERMINE THE RATE, AND IS OF NO MATERIALITY, BUT THE INTENTION OF THE PARTIES, AS SHOWN THROUGHOUT THEIR COURSE OF BUSINESS, GOVERNS.

This was decided in *Penn. R. R. Co. v. Clark Bros. Coal Co.*, 238 U. S. 456; *Stafford v. Wallace*, 258 U. S.

495; *T. & N. O. R. R. Co. v. Sabine Tram Co,* 227 U. S. 112, and in other cases heretofore cited.

The case of *Texas, etc., R. R. Co. v. Sabine Tram Company, supra,* is decisive, in our opinion, of this case and shows that the traffic here involved from beginning to end is foreign and interstate commerce. The only difference being that in the *Sabine Tram Case* it was the first part of the journey that was in controversy, while in this case it is the last part of the transportation. In the *Sabine Tram* case the question was whether or not the *gathering in of lumber from points in Texas to Sabine, Texas,* from which it was shipped to foreign countries was intrastate or foreign commerce, it being conceded that the shipments from the concentration point on the coast to foreign ports was foreign commerce. Here, it is conceded that the transportation from a foreign port to Port Tampa and Jacksonville is foreign commerce and the point in controversy is as to whether the *further shipment by rail from these ports* to the interior points in Florida, where the product is sold and delivered, is a continuation of this foreign commerce or is intrastate commerce. Or, to put it another way, whether, as the plaintiff claims, the shipments come to rest at those ports and take on another character. Or, put as our late associate, Mr. Helm Bruce, put it in the brief in this case before the Circuit Court of Appeals for the Sixth Circuit:

> "But the crucial question in the Tram case, exactly as in the case at bar, was whether this transportation was, for the purpose of determining its character, to be considered as *one movement* from the point of origin to the ultimate destination, or, on the other hand was to be considered as two

independent movements, one from the point of origin to an intermediate point and the other from this intermediate point to the ultimate destination."

It is well to state the facts in the *Sabine Tram case*, because we believe that that case is decisive of the case at bar. There, Powell & Company were engaged in buying lumber for export to different European points, the exportation being made through the ports of Sabine and Port Arthur, in Texas. Powell had made sales of lumber to customers for future delivery in Europe and chartered ships to carry this lumber from the Texas port to its European destination. To cover their contracts for sale Powell & Company bought large quantities of lumber from the Sabine Tram Company, whose mills were at Ruliff, Texas. The Sabine Tram Company sold this lumber to Powell & Company f. o. b. cars Sabine, Texas, and bills of lading were executed by the railroad company for delivery at Sabine. Upon its arrival at the railroad station at Sabine the lumber *was taken possession* of by Powell & Company and carried by it beyond the station about a quarter of a mile to the dock where it was to be loaded. On this dock it was loaded within reach of ships' tackle. The Sabine Tram Company had no connection with this further carriage or switching of the lumber to the dock after its arrival at the station of Sabine, but this was done solely at the instance and under the direction of the agent of Powell & Company (page 115). Powell paid the freight to the railroad but this was only for the convenience of the Tram Company, which was obligated to pay the freight as between it and Powell, and this was charged to the Tram Company. Bills of lading for the lumber were issued calling for delivery at

Sabine. It was transported and delivered there where the purchase price was paid by Powell, to whom it was delivered and where, of course, title passed. At page 118 the Court says:

> "At the time this lumber was shipped it was destined by Powell Company for export to some foreign port, BUT THE PARTICULAR DESTINATION OF ANY PARTICULAR PORTION OF THE LUMBER WAS NOT FIXED, although the destination of all of the lumber to certain foreign ports was known and fixed. The Sabine Tram Company had no concern with the destination of the lumber after it came into the hands of Powell Company, and had no particular knowledge thereof. It supposed from the fact that it was known that Powell Company were exporters of lumber, from the character of lumber which was such as was intended for export, from the fact that Sabine was an important place (unimportant?) at which very little lumber was used, and from other facts and circumstances, known to millmen generally, that the lumber was intended for export, but gave that matter no concern, being only concerned with the delivery of the lumber to Powell Company at Sabine station, and paying the freight thereon. What was done by the Texas & New Orleans Railroad Company after the arrival of the lumber at Sabine, in the way of switching to the docks, allowance of certain privileges allowed only to export freight WAS DONE AT THE INSTANCE AND FOR THE BENEFIT OF POWELL COMPANY, WITH WHICH THE TRAM COMPANY HAD NO CONCERN."

Again the Court said:

> "The lumber remained, after arrival, in the slips or on the dock *from one to thirty days* until a ship chartered by Powell & Company arrived,

when that company selected out the lumber for that cargo, and shipped it forward to the destination for which Powell & Company intended it." (Page 119.)

And in conclusion of its statement of facts, the Court said:

> "*There is not now and was not at the time these shipments moved, any local market for lumber at Sabine,* the population of which place does not exceed fifty in number. *Appellees have never done any local business at that point.* For the year 1905 there was exported through the port of Sabine 14,667,670 feet of lumber; for the year 1906 39,554,000 feet. *The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine.*" (Page 120.)

The facts in these two cases are similar. Here the particular destination of any particular barrel or gallon of oil is not fixed, although it is known that all of these products are going through to interior points in Florida. It is known, for instance, that at Port Tampa no such petroleum products are used or sold, that place being like Sabine, a small place for ships to dock for export and import. In the Sabine case the particular destination of any particular portion of the lumber was not fixed although the destination of all of the lumber to certain foreign ports was known and fixed. Sabine was a small export port similar to Port Tampa. Here the plaintiff claims that the storage tanks are large enough to hold oil for an average of sixty days or more. There the lumber remained on the dock for from one to thirty days until a ship chartered

by Powell & Company arrived. *There the company selected out the lumber for that CARGO and shipped it to the destination for which Powell & Company intended it.* Here plaintiff alleges that title to the oil changes at Port Tampa and it receives its title only at that point. There, in the Tram case, title passed to Powell & Company f. o. b. cars at Sabine Pass. In each case the seller while he probably had no definite information as to the exact point to which the commodity was going, nevertheless knew that it was not to stop at the intermediate point.

But, there is another striking similarity between the facts in the two cases. In the *Tram Case* the Court found:

> "That the shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constituted a large and constantly recurring course of foreign commerce passing out of the port of Sabine."

Here the facts show a large and constantly recurring course and custom carried on daily, monthly and yearly of petroleum products coming into Port Tampa and Jacksonville, destined, not for consumption at those ports, except a comparatively small portion consumed locally at Jacksonville, but for *sale and delivery,* some upon yearly contracts previously made, and others to supply the plaintiff's own demands in its enormous business transacted at bulk and service stations at interior points in Florida, where its products, except those previously sold under contract, are sold and delivered. The opinion of the Court was written by Mr. Justice McKenna, who says:

"If we may regard the essential character of the shipments, we can have no hesitation in pronouncing them to have been in interstate commerce. This conclusion seems to be determined by the last finding of fact. It is there declared that 'the shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine.'

"If the shipments were foreign commerce it is hardly necessary to make explicit the principle that the national dominion over them was supreme; and, conversely, if the shipments were not of that character, they were subject to the regulating power of the state."

"*Texas & N. O. R. Co. v. Sabine Tram Co.*, 227 U. S. 111, 122."

And again:

"It is said, however, that the Sabine Company had no connection with the lumber after its arrival at Sabine, and had no concern with its destination after it came into the hands of Powell & Company, and had no particular knowledge thereof. Like circumstances undoubtedly existed in Southern P. Terminal Co. v. Interstate Commerce Commission. It did not prevail there and cannot prevail here. The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, nor its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured, and shipped, and to give it a various character by the steps in its transportation would be extremely artificial. Once admit the principle, and means will be afforded of evading the national control of foreign commerce

from points in the interior of a state. There must be a transshipment at the seaboard; and if that may be made the point of ultimate destination by the device of separate bills of lading, the commerce will be given local character, though it be essentially foreign." (227 U. S. 126.)

The Court continued:

"And the shipment was not an isolated one, but typical of many others, which constituted a commerce amounting in the year 1905 to 14,667,670 feet of lumber, and in the year 1906, 39,554,000 feet. Nor was there a break, in the sense of the interstate commerce law and the cited cases, in the continuity of the transportation of the lumber to foreign countries by the delay and its transshipment at Sabine. Swift & Co. v. United States, 196 U. S. 375; 49 L. Ed. 518; 25 Sup. Ct. Rep. 276. Nor, as we have seen, did the absence of a definite foreign destination alter the character of the shipments." (Page 130.)

The same views are expressed by this Court in the case of *Southern Pacific Terminal Company v. Interstate Commerce Commission,* 219 U. S. 498. The questions there raised were with respect to the rates on shipments of cotton seed cake and meal, which were purchased by one Young at various points in Texas and shipped to him at Galveston, but ultimately shipped by him to foreign points. Young, who was the owner of the traffic, had leased the pier belonging to the Terminal Company at Galveston and the cake was concentrated upon this pier and manufactured into meal and sacked. About one-half of the cake was ground up on the wharf and reshipped as meal and the balance was shipped to foreign ports as cake. *The traffic was thus actually taken into possession by the owner,*

concentrated, accumulated and treated on his privately leased warehouse space and subsequently loaded into vessels for export. By reason of his lease Young was able to avoid the payment of railroad storage and handling charges and could manufacture his cotton seed meal on the wharf, thereby obtaining an advantage over his competitors. The validity of this lease was attacked as an undue preference given to Young, and the railroad defended upon the ground that the movement to Galveston was purely an intrastate one and hence without the jurisdiction of the Interstate Commerce Commission, but this Court overruled this contention and held that the traffic was essentially interstate or foreign throughout. Here it will be seen that the cotton seed cake changed its form by manufacture and became another product, to wit, cotton seed meal, and here it was contended that the transit of the cake and meal absolutely ended on the leased premises at Galveston and that Galveston was a final point of concentration and manufacture. The report of this case does not show how long the cotton seed meal and cake remained in the possession of Young at Galveston after being delivered to him and before being ground up and shipped, but there was a delay in the shipment from the port, just as in this case there is some delay at times in the shipments of gasoline from the Florida ports, but no delay in the shipment of lubricating oil, which is pumped direct from vessel into tank cars and immediately transported by rail. The Court held that the shipments from points in Texas to Galveston were but incidents in the transshipment of the product in export trade and, therefore, their regulation was within the power of the Interstate Commission. The Court said:

"The cake and meal purchased by Young are bought by him in Texas, Oklahoma, Louisiana and Arkansas, but chiefly in Texas, and shipped to him on bills of lading and waybills, showing the point or origin in those states and the destination at Galveston. *The purchases are made for export, there being no consumption of the products at Galveston. His sales to foreign countries are sometimes for immediate and sometimes for future delivery, irrespective of whether he has the product on hand at Galveston. At times he has it on hand. At times, therefore, orders must be filled from cake to be purchased in the interior or then in transit to him.* When the cake reaches Galveston it is ground into meal and sacked by Young, and for the meal thus ground and such meal as has been brought to his customers he takes out ships' bills of lading made to his order."

And the Court continued:

"In other words, the manufacture or concentration on the wharves of the Terminal Company are but incidents, under the circumstances presented by the record, in the transshipment of the products in export trade, and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the substance of things, and make evasions of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas."

If the Court will turn to the charts and graphs which we have attached to the brief, the graphs will show a large and constantly recurring course of foreign and

interstate commerce passing through the ports of Port Tampa and Jacksonville to interior points in Florida. While the shipments into the ports vary, yet the shipments *out* of the ports, as seen on the charts and graphs, show a steady flow, not from, but through these ports, to such interior points.

As showing that this oil is continually flowing in a constant stream through to interior points, see the testimony of Mr. Morris on cross-examination (R. 129):

> "The Standard Oil Company has in some months only two steamers coming in and some months four, and I suppose they might have five but probably not more than five. At the time oil and gasoline are being pumped from the boat into a tank and from the tank into tank cars *simultaneously* is possibly *one-third of the time*. Some of the ships take three days and some others can be pumped out in one day. If they have two a month and it took a day to pump each one would be two days. *There is no stoppage of shipping out of the tank into tank cars on account of pumping in. 'They are pumping in and shipping out at the same time whenever a boat happens to be there and they happen to be loading tank cars.*"

Thus, there is a constant stream flowing through these ports and these ports are used only incidentally as a funnel through which the products may flow to plaintiff's contract customers and its bulk and service stations.

Such a stream or flow is well emphasized by the present Chief Justice in Stafford v. Wallace, 258 U. S. 495, in an illuminating opinion. The opinion covered two suits heard together, both of them involving transactions in live stock at the stock yards in Chicago. One

of them was by commission men at the Union Stock Yards and the other by "dealers" in the same yards. They both attacked the constitutionality of the "Federal Packers and Stock Yards Act of 1921, approved August 15, 1921", which provides for the supervision by Federal authority of the business of the commission men and of the live stock dealers in the great stock yards of the country. It seems that the live stock came from the farmers of the West, who had raised it, consigned to commission men at the stock yards, who sold it as commission men to "dealers", who in turn sold the same again "to farmers and stock feeders, to be taken to the country for farm use and fattening", and also to packers. "It was conceded that of all the live stock coming into the Chicago Stock Yards and going out, only a small percentage, less than 10%, is shipped from or to Illinois" (page 502). It was the contention of the plaintiffs "that with the delivery to the commission merchant, the transportation is completely ended, that all the live stock consigned to commission merchants are sold by them for a commission or brokerage, and not on their own account; that they are sold at the stock yards and nowhere else" (page 498). As to the dealers, it was claimed "that the dealers buy in open market in competition with each other; that they pay the expense of the custody, care, feeding and watering of the stock while they hold them; that they sell promptly, and have nothing to do with the shipment of the live stock they sell from the yards to points outside" (page 499).

These so-called "dealers" occupied very much the position which plaintiff insists that it occupies when it speaks of itself as occupying the position of a "jobber", to wit, one who buys in large quantities and

then resells. That is just what these dealers did. Upon the foregoing facts it was insisted that the transactions of the commission men and the dealers at Chicago constituted no part of interstate commerce; but on that subject the Supreme Court, in an opinion by Chief Justice Taft, said:

> "The stock yards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. *The stock yards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another.* Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character. *The commission men are essential* in making the sales without which the flow of the current would be obstructed, and this, whether they are made to packers or dealers. *The dealers are essential* to the sales to the stock farmers and feeders. *The sales are not in this aspect merely local transactions. They create a local change of title, it is true, but they do not stop the flow; they merely change the private interests in the subject of the current,* not interfering with, but, on the contrary, *being indispensable to its continuity.* The origin of the live stock is in the West, its ultimate destination known to and intended by, all engaged in the business in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. *The stock yards and the sales are necessary factors in the middle of this current of commerce.*" (pages 515, 516.)

This seems to us to be a very clear and strong statement, and one which describes the character of the commerce in the oil which we are considering. Its *origin* is in Mexico and Louisiana; its *ultimate destination* is known to, and intended by, all engaged in the business to be the interior of Florida. The change from *water* trasportation to *rail* transportation, and the use of the tanks as a medium of exchange are but necessary factors in the middle of this current of commerce.

In the course of its opinion in *Stafford v. Wallace*, the Court quotes with approval the following language from *Swift & Company v. United States*, 196 U. S. 375, the principles of which this Court says have become a fixed rule of this Court in the construction and application of the commerce:

> "Commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the *purchase* of the cattle is a *part and incident* of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle" (258 U. S. 518). *Swift & Co. v. United States*, 196 U. S. 375.

The reasoning and decision of this Court in the case of *B. & O. S. W. R. Co. v. Settle*, 260 U. S. 166, is identical with that in the case of *Stafford v. Wallace*. The former case was twice before the Circuit Court of Ap-

peals for the Sixth Circuit, from which this appeal is pending, before coming to this Court. (*B. & O. S. W. R. Co. v. Settle,* 249 Fed. 913, and 272 Fed. 675.)

The facts in this case were as follows: Settle & Company seem to have been contractors engaged in business in which they used large amounts of lumber. They had "jobs" at different places in Ohio, including Oakley, Hyde Park, Pleasant Ridge and Madisonville. They bought their lumber at different points in the South. Oakley and Madisonville were both within the city limits of Cincinnati. There were published interstate carload rates from southern points to Madisonville. There was also a published local intrastate carload rate on lumber from Oakley to Madisonville. The interstate rate from the southern points to Madisonville was greater than the sum of the interstate rates from southern points to Oakley, plus the intrastate rate from Oakley to Madisonville. Settle & Company had certain carloads of lumber shipped from Southern points consigned to themselves at Oakley. When these cars reached Oakley, Settle & Company accepted the lumber. Delivery was there made to them by placing the cars on team tracks. And thereafter they shipped these cars containing this lumber from Oakley to Madisonville, for which shipments new bills of lading—local bills—were issued, and the lumber was carried on to Madisonville. The following statement of fact was made by the Circuit Court of Appeals in its opinion in 272 Federal:

> "It further appeared upon the trial that defendants had no place of business at Oakley; but there was testimony that Oakley was their unloading and distributing point for lumber to be used at Oakley, Hyde Park, or Pleasant Ridge, where de-

> fendants had jobs; *that defendants could not tell, until the cars reached Oakley, whether they would have demand for the lumber there,* but that the cars that ultimately went to Madisonville (the cars in question here) were intended from the beginning to go to Madisonville; that they were shipped to Oakley, and reshipped from that place to Madisonville, for the purpose of getting the lower freight rate." (Page 677.)

Under this state of facts the Circuit Court of Appeals was of the opinion, for which the reasons are given mainly in the Court's first opinion in *249 Federal,* that:

> "The character of the shipment from Oakley to Madisonville is to be ultimately tested by the consideration whether or not there was an actual good faith delivery of the shipments to the consignee at Oakley, and actually a new and independent shipment therefrom by defendants to Madisonville while the lumber was physically present in their possession, and that the effect of such good faith delivery, possession and independent reshipment is not, as a mere matter of law, converted into an interstate shipment by the existence of an original and continuing intention to so reship in intrastate commerce for the saving of expense. 249 Fed. 913, 918, 162 C. C. A. 111, 116." (272 Fed., page 677.)

In other words, the Circuit Court of Appeals thought that if the shipper did actually have the goods consigned to himself at Oakley, and did actually there receive delivery and have physical possession of the goods at Oakley, and he did thereafter ship the goods by a new contract under a new bill of lading by another separate movement from Oakley to Madisonville, this was something he had the right to do, and the two

movements were in fact independent of each other. The Court thought the mere fact that shipper knew when the lumber started from the southern points that he was going ultimately to take it to Madisonville, and that such was his intention, did not change the legal nature of the shipments. This seemed to the Court to be exactly what this Court had held in the case of *Gulf, etc., Ry. Co. v. Texas,* 204 U. S. 403, 413, under exactly similar facts, where exactly the same thing was done for exactly the same purpose.

But this Court reversed the judgment of the Circuit Court of Appeals and *took exactly the opposite view upon the ultimate determining question in the case.* Whereas the Circuit Court of Appeals, as expressed in the language above quoted, thought that the character of the shipment was to be ultimately tested by the consideration of whether or not there was an actual good faith delivery at Oakley, and that if so, the character of the shipment was not affected by the fact that the shipper had an original intention to reship from Oakley to Madisonville, this Court thought that this original intention was the determining factor in the case, fixing the nature of the shipment "as a matter of law." Stating the question to be determined, this Court said:

> "The question is presented whether in view of the undisputed facts the original and continuing intention so to reship made the reshipment, as matter of law, part of the through interstate movement." (160 U. S. 168.)

In answering that question the Court said:

> "No material fact, evidential or ultimate, had been left in dispute. *There was no room for any*

issue of good faith to be determined by the jury. Physical delivery of the cars to the shippers had been made at Oakley, after payment of the freight and other charges. The shippers had no place of business at Oakley. The delivery there was the completion of one stage in the contemplated movement to Madisonville. After a brief interval the second stage was begun under the local bill of lading" (page 169).

And again the Court said:

"Madisonville was at all times the destination of the cars; Oakley was to be merely an intermediate stopping place, and the original intention persisted in was carried out. That the interstate journey might end at Oakley was never more than a possibility. Under these circumstances, the *intention* as it was carried out *determined, as matter of law, the essential nature of the movement;* and hence that the movement through to Madisonville was an interstate shipment. *For neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk, is an essential of a through interstate shipment.* These are common incidents of a through shipment; and when the intention with which a shipment was made is in issue, the presence, or absence, of one or all of these incidents may be important evidence bearing upon that question. But where it is admitted that the shipment made to the ultimate destination had at all times been intended, these incidents are without legal significance as bearing on the character of the traffic" (page 171).

This statement by the Court is directly applicable to the facts in the case at bar. There is no dispute in the present case as to the intention of the Standard Oil Company of Kentucky when it bought this oil from the Standard Oil Company of New Jersey in Mexico,

or from the Standard Oil Company of Louisiana at Baton Rouge, Louisiana, and ordered the same shipped to Port Tampa. Of course, there was, to use the language of this Court in the *Settle case*, "a possibility" that the oil might be used at Port Tampa, *but there was no expectation or intention of such a result*. Everybody knew that the oil was going *on through Port Tampa* to the Standard Oil Company's customers in the interior of the State. This was known in the present case just as certainly and as definitely as it was known in the *Settle case* that the lumber was going on through Oakley to Madisonville. And, as said by this Court in *Spalding Bros. v. Edwards* "Theoretical possibilities may be left out of account" (262 U. S. 66, 70).

It is true in the present case that it was not known as to any particular shipment or gallon of oil whether its ultimate destination was to be one particular point or another in the interior of Florida. And this was wholly unimportant, because all of the oil of each class was exactly alike.

As said by the Court below:

> "The identity of the oil which goes into the tank with that which goes out is not lost. The oil is fungible, each gallon is equal to any other gallon. If 100 barrels were billed from Tampico to the user at an interior point, no one would think that a holding of it on the way in this storage tank for a reasonable time until the user was ready for it, would affect its character as a through shipment. To this view it does not seem material that the users, instead of one concern, are a known and small group, among whom it is from the beginning intended that the shipment should be distributed" (R. 136).

II.

THE MOVEMENT OF LUBRICATING OIL FROM PORT TAMPA, AND THE MOVEMENT OF LUBRICATING OIL, GASOLINE AND KEROSENE FROM JACKSONVILLE, BOTH CONSTITUTE INTERSTATE COMMERCE, AND THE REASONING OF THE CIRCUIT COURT OF APPEALS TO THE CONTRARY IS ERRONEOUS, BECAUSE IT MAKES THE CHARACTER OF THOSE MOVEMENTS TO THE INTERIOR DEPEND, NOT UPON THEIR INTRINSIC NATURE, BUT UPON THE AMOUNT OF THE SMALL PERCENTAGE SOLD LOCALLY.

It is definitely and positively known here that all of the petroleum products from Mexico and Louisiana are going through Port Tampa and Jacksonville to some other points in the interior of the State where the Standard Oil Company's customers with whom it has contracts are located, or to its bulk and service stations from which it sells and delivers it, except a small percentage of gasoline and kerosene, which is only 13 per cent, which goes through Jacksonville.

The Court below, on page 139, says:

> "As to gasoline and kerosene, the proof is that 13 per cent of the amount received into the tanks is used locally at Jacksonville and never gets any further shipment. 13 per cent is a very substantial fraction; it cannot be regarded as negligible. It follows that as to any particular unit of oil coming into the tanks, it cannot be said that there was always an intent for further transportation and for merely temporary stoppage. The one causing the original shipment knew, and therefore intended, that this particular gallon or barrel, or 100

> barrels, might stop at Jacksonville or might go on. This uncertainty is inconsistent with that clear intent which, and which only, can carry the original character along into the second stage of the interrupted shipment."

And, therefore, because of this 13 per cent, which is used locally at Jacksonville, the Court concluded that intrastate rates should apply on *all gasoline and kerosene* shipped out of Jacksonville. The error which the Court below falls into in its conclusion is that there is no question in dispute between these parties as to the rate on the petroleum products which *stop* at Jacksonville. There is no rate *charged* on them as *they are delivered in tank wagons and sold locally,* but the products which go to the interior points, for instance, fuel oil, which is contracted for by the year, and gasoline and kerosene, which is shipped to plaintiff's own bulk and service stations and there sold and delivered, was *intended at all times,* and *prior* to the *importation* into Jacksonville, to be shipped to these interior points and *there* sold. This was a constantly recurring course of business, custom and practice of the Oil Company and of its customers, known by every one connected with the business.

Mr. Morris testifies (R. 128) that he is quite familiar with the methods of oil companies at Port Tampa, and in a general way knows what is done at Tampa. The Standard Oil Company (this plaintiff), the Gulf Refining Company, Seaboard Oil Company and the National Petroleum Corporation, are all located at Port Tampa, and the Mexican Petroleum Company and the Texas Oil Company have yards at Tampa. The Gulf Refining Company brings its products into Port Tampa in tank ships owned by the Gulf Refining Company and the products of the other oil companies are distri-

buted in absolutely the same way as the Standard Oil Company of Kentucky distributes.

If the reasoning of the Circuit Court of Appeals above should be upheld this defendant would be in an anomalous situation and, unable intelligently to apply the proper class of rates to the kerosene and gasoline shipped out of Port Tampa or Jacksonville by the various oil companies, unless it could ascertain in advance what percentage of receipts of each oil company was sold locally or barrelled, and whether the oil was shipped in the company's own vessels or in chartered vessels. The record shows that this plaintiff sells no gasoline or kerosene at Port Tampa, but at Jacksonville sells 13 per cent locally and delivers it from its own tank wagons. It is silent as to what portion, if any, the Gulf Refining Company, or the Seaboard Oil Company, or the National Petroleum Company ship from or sell at either of these ports. Suppose the Seaboard Oil Company sold 2 per cent of gasoline and kerosene at Port Tampa or Jacksonville, the Mexican Petroleum Company sold 5 per cent, the Gulf Refining Company sold 10 per cent and the Standard Oil Company sold 13 per cent, what, we ask, would be the proper percentage to indicate whether the commerce was interstate or intrastate? The question of *percentage* of the products *sold at Jacksonville* is *no index* to the *character* of the commerce that goes to the interior points of Florida. Percentage of products sold locally cannot be used, therefore, as a guide to determine the character of the particular commerce that moves through from Mexico, Louisiana or points in other states to interior Florida points. Likewise, the question of where title passes cannot be considered as a measure by which to determine the rate, because one company would be charged the interstate rate and the

company right next to it would be charged the intrastate rate, if the change of title governed the character of the rate.

Tampa and Port Tampa on the West coast of Florida, and Jacksonville on the East coast of Florida, are ports of entry and are in competition with each other, and Tampa and Jacksonville are cities of about the same size. If the intrastate rates are to be applied through the Port of Jacksonville, and it is admitted that the intrastate rates are lower than the interstate rates, then this would create a discrimination in favor of the Port of Jacksonville against the ports of Tampa and Port Tampa. Not only would this create a discrimination between the two ports but it would create a discrimination between the particular oil companies, the shippers. Taking Port Tampa on the one hand, at which this plaintiff sells no oil, and assuming that the Mexican Petroleum Company and the Texas Company located at Tampa, sell 13 per cent of their imports locally in Tampa, the rates to be applied under the reasoning of the Circuit Court of Appeals upon kerosene and gasoline would be interstate from Port Tampa and intrastate state rates from Tampa, thus giving to the Mexican Petroleum Company and the Texas Company at Tampa an undue advantage and preference over its competitors, including this plaintiff, and would handicap the port of Port Tampa, so that the probabilities are that the oil companies would either have to seek locations in Tampa or else the defendant would have to reduce its reasonably low interstate rates to the level of the intrastate rates applicable from Tampa.

The reasoning in the opinion of the Court below from which it finds that the movement of lubricating oil from Port Tampa to interior points, and Tampa

to interior points, and gasoline, kerosene and lubricating oil from Jacksonville to interior points constitutes intrastate commerce, is erroneous, for there is no contradiction in the record of the facts testified to by plaintiff's own witnesses that lubricating oil is pumped direct from ship into tank cars and moves on a tariff rate from Port Tampa to Tampa. It, therefore, does not stop but is in continuous movement from Louisiana fields to Tampa, where it is pumped into a tank. The reasoning is also erroneous as to the movement from Jacksonville to interior points. The Court says (R. 138), referring to lubricating oil:

> "At Port Tampa it is pumped directly from the steamers into the tank cars, which go mostly to Tampa. At the Tampa warehouse it is pumped from the tank cars into storage tanks, and then *at convenience* is put into tank wagons or into barrels or some other small containers in which it is partly sold to the general public and partly sent along to the local filling stations maintained by the company. If any of it goes in bulk from Tampa to the bulk stations, that does not appear, and would not be controlling in any event. An unstated but small fraction goes in the tank cars directly from Port Tampa to the bulk stations, but, for the reasons to be stated with regard to Jacksonville, this fraction can not be deemed to make a continuous through journey. As to all lubricating oil rehandled at Tampa, we find that by this second halt and handling within the state, by its substantial *change of form* for future shipment, and by its *devotion in its new form,* in large part if not wholly, to general public distribution and sale, it loses its status as material in the course of interstate transportation and takes on a predominently local character."

As authority for this decision the Court cites the cases of *Penn. R. R. v. Knight, Arkadelphia Company v. S. L. & S. W. R. R., Sou. Pacific R. R. v. Arizona,* and *Missouri v. Kansas,* already referred to, which cases are also relied upon by Counsel for the Oil Company here, but the Court overlooked what this Court said in the case of *Western Oil Refining Company v. Lipscomb,* 244 U. S. 346. The facts in that case were as follows: The plaintiff had an oil refinery in Illinois and a steel barrel factory in Indiana and sold its products upon orders taken by traveling salesmen in its employ. To fill these orders in Maury County, Tennessee, it shipped into that county from its refinery a tank car of oil and from its factory a car of steel barrels. Both cars were billed to it at Columbia in that county, and after the orders for that place were filled the cars were rebilled to the plaintiff at Mount Pleasant in the same county, where the orders from the latter place were filled. At both places the orders were filled directly from the cars by a traveling agent of the plaintiff and the purchase price was collected at that time—this being what was contemplated at the time when the orders were taken. If the order was for both oil and barrels the oil was drawn out of the tank car into the barrels and the two were jointly delivered; if the oil alone was ordered it was drawn from the tank car into barrels, otherwise provided by the buyer. When the cars were originally shipped they contained just the quantity of oil and the number of barrels required to fill the orders from the two places, and plaintiff intended that they should remain at Columbia only long enough to fill the orders for that place and then should be sent to Mount Pleasant so the orders for that place could also be filled. The quantity of oil and the number of barrels required to

fill the orders for Mount Pleasant were in the cars continuously from the time of original shipment until the cars reached that place. The plaintiff had no office or local agent in Tennessee, nor any oil depot, storage tanks or warehouses in that state.

Tennessee collected an occupation tax from the plaintiff and it sued to recover back the money. The Supreme Court of Tennessee held that the movement from Columbia to Mount Pleasant was intrastate, the interstate movement having been completed and the shipment having come to rest at Columbia, and, therefore, that was an adequate basis for exacting the tax. The Court, in distinguishing the case from the case of *Gulf, S. & F. R. R. v. Texas,* 204 U. S. 403, at page 349, says:

> "It is a case where the shipper intended from the beginning that the transportation should be continued beyond the destination originally indicated, and where there is nothing which requires that decisive effect be given to the bill of lading. Ordinarily the question whether particular commerce is interstate or intrastate is determined by what is actually done, and not by any mere billing or plurality of carriers, and where commodities are in fact destined from one state to another, *a rebilling or reshipment en route does not of itself break the continuity of the movement or require that any part be classified differently from the remainder.* * * * Here, when the cars were started from Illinois and Indiana, it was intended by the shipper, as is expressly conceded, that they should be taken to Columbia, Tennessee, *where a portion*—a definite portion—of the contents of each *was to be taken out and delivered,* and that the cars, with the *remainder* of the contents, *should proceed to Mount Pleasant in the same state;* and this is what actually was done. Columbia was the destination of only a part of the mer-

> chandise, not of all. As to part, it was merely the place of a temporary stop en route. The original billing to Columbia and the rebilling from there to Mount Pleasant operated in the same way as would an original billing to Mount Pleasant with the privilege of stopping en route at Columbia to deliver a part of the merchandise. * * * Certainly the transportation of the merchandise destined to Mount Pleasant was not completed when it reached Columbia; nor was the continuity of its movement broken by its temporary stop at that place. As to that merchandise the journey to Columbia and the journey from there to Mount Pleasant were not independent, each of the other, but in fact and in legal contemplation were connected parts of a continuing interstate movement to the latter place."

And the Court declared the tax void because it was one imposed for carrying on interstate commerce. In what respect then is the difference between the facts in that case and the facts in this case in regard to the movement of the products from Jacksonville to interior points, whether it be stopped temporarily at Tampa for the purpose of barrelling or Jacksonville, for the purpose of selling a portion at that point. The movement to interior points was intended to go there in the beginning and the mere temporary stoppage at Jacksonville was only incidental, as shown by this case.

In the case at bar the lower Court says that the lubricating oil rehandled at Tampa takes on a substantial change of form for future shipment and by its devolution into such new form loses its status as material in the course of interstate transportation. The only change of *form* is in the *method* of shipment and not in the *character* of the article. Neither the form nor the character of the oil is changed. It is simply

shipped in smaller containers, to wit, barrels, instead of being shipped to such points in tank cars in which it is carried from Port Tampa to Tampa. The container in which it moves does not affect and cannot change the commodity itself. If a woman bobs her hair she does not thereby become a man, and if she changes from a dress to a one-piece bath suit, although encased in different clothing, she is still a woman. Suppose, for instance, a cargo of fuel oil left Tampico, Mexico, for Port Tampa and the ship was wrecked off the coast of Florida and a *portion* of the oil was recovered and taken to Port Tampa and thence shipped to the phosphate mines in the Bone Valley District. Because of the fact that *all* of the shipment from Tampico was not transported to the Bone Valley District would not be reason why the *character* of the oil that *did go* to the Bone Valley District was changed. In the *Lipscomb case, supra,* the oil was actually shipped to Columbia, Tennessee, in a tank car and a *portion* (and the record does not show what portion) was taken from the tank car at that point, barrelled and delivered to purchasers. The *balance* of the oil was then carried to Mount Pleasant and there delivered. Likewise, the carload of steel barrels was carried to Columbia and a *portion* (the record does not show what percentage) of the shipment was taken out and delivered to purchasers at that point and the *balance* was forwarded to Mount Pleasant, *there to be used either in one or two ways,* to be sold to purchasers of the barrels, or to be used by the plaintiff to place therein oil which was then contained in the tank car forwarded from Columbia. But, as the Court said, the rebilling from Columbia of the *balance* of the shipment *did not require any part of the shipment to be*

classified differently from the remainder. The remainder, according to the Court, proceeded to Mount Pleasant *in the same state.* There is no difference between such a movement than there is between a shipment moving in interstate commerce on milling in transit rates. Grain moving upon milling in transit rates in interstate commerce changes its character. For instance, wheat starts its journey as a grain and completes its journey as manufactured flour. The *character* of the wheat has actually been changed but the *commerce* itself was *intended* to go through in its altered shape and in interstate commerce, and interstate rates are, therefore, applied. The same amount of flour is not delivered at destination as the amount of wheat originally shipped. There is a portion wasted or destroyed and a portion, the husk or shell, which becomes a by-product, and does not complete the original journey.

So that the Court below fell into error in holding that the lubricating oil from Port Tampa and Jacksonville and the gasoline and kerosene from Jacksonville changed their character from interstate to intrastate commerce by reason of the stoppage at these points. We maintain that such stoppages were mere incidents and were *temporary* resting places in a through movement, and the fact that some comes to rest permanently at Jacksonville, by being sold locally and delivered in tank wagons, cannot affect that portion which goes through and was intended from the beginning to go through from Port Tampa and Jacksonville to interior Florida points.

In *Stafford v. Wallace, supra,* the Chief Justice in stating the facts used this language:

> "It was conceded that of all the live stock coming into the Chicago Stock Yards and going out only a small percentage, less than 10 per cent, is shipped from or to Illinois." (258 U. S. 502.)

In the case of *Railroad Commission v. Worthington*, 225 U. S. 101, the question involved was the application of rates on coal billed from Ohio coal fields to Lake Erie ports *and reshipped thence by vessel* to points in other states. The Railroad Commission of Ohio undertook to fix a rate of 70 cents on the coal for the haul from Ohio mines to Huron, Ohio, a port on Lake Erie and to enforce this rate on so-called "lake cargo coal." The *vessels* for the coal were *generally furnished by the operators but sometimes the coal was sold f.o.b. vessel, title passing to the purchaser upon the coal being loaded.* When the coal left the mines it was not known definitely in what vessel it would be loaded, *nor to what particular ultimate destination it would go,* and sometimes the coal was sold and the vessels for the lake transportation were procured *after the coal had arrived at the ports.* It was held "that *this coal was intended from the first to be transported by vessel to other states,* was an interstate movement from the mines to the ports, although billed locally to the ports in the same state in which it originated. The Court held that *neither the fact of accumulation of large quantities of coal at the ports, nor the fact that a relatively small portion of this coal was never reshipped therefrom,* would alter or affect this essentially interstate character of the traffic.

The Court says:

> "It is true, as argued by the learned Counsel for the Commission, that this coal may be accumulated in large quantities at Huron, and only taken

out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the state, but it must always be remembered that this 70 cent rate applies *solely to such coal as is in fact placed upon vessels for carriage to beyond the state points;* and, as the circuit court said, *the substance of things is not changed by the fact that a small part may be unloaded at one of the Ohio Islands in Lake Erie.*

"The situation then comes to this: *That the rate in force is applicable only to coal which is to be carried from the mines in Ohio to the Lake, there placed upon vessels and thence carried to upper lake ports beyond the state.* By every fair test the transportation of *this* coal from the mine to the upper lake ports is an interstate carriage intended by the parties to be such, and the *rate* fixed by the Commission, which is in controversy here, *is applicable alone to coal which is thus, from the beginning to the end of its transportation in interstate carriage;* and such rate is intended to and does cover an integral part of that carriage, the transportation from the mines to the Lake Erie port, the placing upon the vessel and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage." (Pages 108-109)

And the Court declared the order of the Railroad Commission of Ohio to be an attempt to directly regulate and control interstate commerce and enjoined its enforcement.

It seems, therefore, that this Court has distinctly held when the parties contract for large shipments of products to be sold in another state and to be concentrated at a port that interstate rates apply to the through movement, but that the *rates apply* only to such portion of the shipments as are transported from

the *point of origin through to the destination, and the fact that a small portion of such shipments does not go through to destination in interstate commerce does not affect the character of that portion of the shipments which makes the entire interstate journey.*

The Railroad Commission in that case relied upon the case of *Gulf, Colorado & Santa Fe Ry. v. Texas*, 204 U. S. 403, which the plaintiff relies upon here, but the Supreme Court says:

> "There it was sought to hold a railroad company upon a shipment of corn from Texarkana to Goldthwaite, Texas, for a violation of the regulations of the state railroad commission applicable to intrastate carriers. The company contended that the shipment was in fact an interstate carriage from Hudson, S. D., to Goldthwaite, Texas. The facts showed that the corn was carried upon a bill of lading from Hudson to Texarkana, and that afterwards, some five days later, it was shipped from Texarkana to Goldthwaite, both points in the State of Texas. This was held to be an intrastate shipment unaffected by the fact that the shipper intended to reship the corn from Texarkana to Goldthwaite, for, as this Court held, the corn had been carried to Texarkana upon a contract for interstate shipment, and the reshipment five days later upon a *new* contract was an independent intrastate shipment. It is evident from this statement of facts that the case is quite different from the one under consideration. There a *new* and *independent* contract for intrastate shipment was made, the interstate transportation having been completely performed; here a rate is fixed on that part of an interstate carriage which includes the actual placing of the coal into vessels ready to be carried beyond the state destination." (Page 109)

Likewise, there can be no application of the facts of that case to the facts in this. They are directly opposite. Here the interstate transportation of the petroleum products has not ended, nor is it intended that it shall end or be completed at Port Tampa or at Jacksonville, but the continuing intention and the custom and practice of the plaintiff in this case, and of its customers and its agents at its bulk and service stations at interior points in Florida, is that these products which come to Port Tampa and Jacksonville, except that small portion used locally at Jacksonville, are not to come to rest and end the journey at these points, but are to continue through to the interior points in Florida in fulfillment of contracts previously made, or to fill its tanks at its bulk and service stations in accordance with information which the Oil Company has obtained from those bulk and service stations as to their needs from time to time, and to be sold and delivered therefrom.

Of the *Gulf case* the Court said:

> "There a new and independent contract for intrastate shipment was made" (page 109).

And that was the turning point of the case. That was the fact which showed the original intention of the parties. Here, there is no new or independent contract, and here the original intention of transportation has not been completed when the oil is transferred from the vessel to the Oil Company's tanks at those ports. The lubricating oil at Port Tampa, as the record shows, does not even stop or come to rest at Port Tampa, but is pumped directly from shipside into tank cars and rushed by rail to Tampa and there placed in the plaintiff's tanks; and the only reason for not doing

the same thing with gasoline and the other products is that the movement is so tremendous in volume that sufficient cars could not be placed to unload the vessels and carry the commodities through to interior points at once, and the contracts for fuel oil provide it shall be used only at the phosphate mines. The complaint alleges as to the lubricating oil at Jacksonville, "About 10 per cent of the lubricating oil at Jacksonville is used locally, or *occasionally leaves Jacksonville in tank cars* for points in South Florida" (R. 7). And it must be borne in mind that the complaint alleges that gasoline, refined oil and fuel oil at Jacksonville are received and sold in exactly the same way as at Port Tampa.

One of the latest cases decided by this Court upon the question in dispute in this case is *Peoples Natural Gas Company v. Public Service Commission of Pennsylvania,* 270 U. S. 550. The Peoples Company is a public service corporation created under the laws of Pennsylvania and engaged in producing, purchasing, transporting by pipe line, and selling natural gas. It *purchases* about two-thirds of the gas which it transports and sells from a producing company in West Virginia having pipe lines leading from that state to the boundary of the two states, and it *produces* the other one-third from its own oil wells in Southwestern counties of Pennsylvania. It has a system of pipe lines in Pennsylvania which is connected at the state boundary with the lines of the West Virginia company, and leads thence to Pittsburgh, Johnstown and other Pennsylvania cities and boroughs, where it sells the gas. The gas coming from West Virginia is transported through the pipe lines as connected at the state boundary in a continuous stream from the place of

production in one state to those of consumption in the other. At the state boundary that gas passes through a registering meter and that point is treated as the place of delivery to the Peoples Company, *but the transportation is not interrupted there.* The gas from the gas wells in Pennsylvania is fed into the moving stream at different points after it crosses the state boundary. The movement of the stream towards the point of destination is accelerated by means of pumps in Pennsylvania—one near the state line and one remote from it. The Peoples Company sells directly to consumers at the several places of consumption other than Johnstown, and there it sells to an independent company, which in turn sells to consumers. The Gas Company had a contract under which for upward of ten years gas was supplied to the Johnstown Company, but in the contract the Peoples Company had reserved the privilege of terminating it, and this privilege it exercised.

Thereupon, the Public Service Commission made an order requiring the Peoples Company to continue to supply gas to the Johnstown Company as theretofore, proceeding on the theory that the Peoples Company was a public service corporation and could be required, irrespective of the terms of the contract, to continue supplying gas to the local company and thus continue its indirect service to Johnstown consumers. The Supreme Court of Pennsylvania held that the transportation of the gas in Pennsylvania was intrastate commerce and this Court, in speaking of this decision of the Pennsylvania Court, says:

> "The first ground of the decision is based on two conclusions: One that, as the West Virginia gas is delivered at the state boundary and the title

> passes there, interstate commerce ends at that boundary and all further transportation and sale in Pennsylvania are in intrastate commerce."

This Court, however, seems to have differed with the Pennsylvania Court, and at page 553, says:

> "As respects the West Virginia case we are of the opinion, in view of its continuous transportation from the places of production in one state to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that *the passing of custody and title* at the state boundary *without arresting the movements to the destinations intended* are minor details which do not affect the essential nature of the business" (page 554).

It will be noted that this case involved the question of delivery of gas from a producing company in West Virginia to another company at the state boundary and the transportation by the gas from the state boundary of the state through the state to an interior point and delivery of the gas at that interior point, the title passing at the state boundary. So it seems to us that there can be no distinction between the facts and principles involved in that case and the facts and principles in this, and the Court held that the entire movement of gas from the West Virginia fields to and beyond the border of Pennsylvania and through the state to the interior points therein, though mingled with gas produced in Pennsylvania, was a part of the transportation originally contemplated when the gas begun its journey in West Virginia and was throughout its entire transaction interstate commerce.

Another late case decided by this Court is *Binderup v. Pathe Exchange*, 263 U. S. 291. In that case the plaintiff sued the defendant under the Anti-trust Act, the plaintiff being an exhibitor and owning a moving picture show at Minden, Nebraska, and operated, as lessee, theatres in other places, to all of which, including his own, he supplies moving picture films and advertising matter connected therewith. He was also in the business of selecting and distributing to a circuit of moving picture theatres, films and advertising matter accompanying them, under agreements with twenty or more operators in various parts of the state. The defendants were also distributors located in New York, and were engaged in manufacturing motion picture films and distributing them throughout the United States. Plaintiff claimed that the defendant by unfair means put him out of business. The Court says (page 309):

> "The film contracts were between residents of different states, and contemplated the leasing by one to the other of a commodity manufactured in one state and transported and to be transported to and used in another. The business of the distributors, of which an arrangement with the exhibitor here was an instance, was clearly interstate. It consisted of manufacturing the commodity in one state, finding customers for it in other states, making contracts of lease with them, and transporting the commodity leased from the state of manufacture into the states of the lessees. If the commodity were consigned directly to the lessees, the interstate character of the commerce throughout would not be disputed. Does the circumstances that, in the course of the process, the commodity is consigned to a local agency of the distributors, to be by that agency held until delivery to the lessee in

the same state, put an end to the interstate character of the transaction and transform it into one purely intrastate?"

And the Court, in answering this question, said:

> "*We think not. The intermediate delivery to the agency did not end, and was not intended to end, the movement of the commodity. It was merely halted as a convenient step in the process of getting it to its final destination.* The general rule is that where transportation has acquired an interstate character, 'it continues at least until the load reaches the point where the parties originally intended that the movement should finally end.'"

In the case at bar we say the point where the parties originally intend the movement shall finally end is the interior destinations in Florida and not the ports of Port Tampa and Jacksonville.

To the same effect is the case of *Douglas Company v. Southern Ry. Co.*, 216 Ill. App. 148-151. That case involved rates on carload shipments of starch by vessels into the port of Charleston and some times reshipped immediately by rail, and at others left in the steamship company's warehouse for *indefinite periods*, the usual storage charges being paid thereon, and later reshipped to points in South Carolina. Some of the starch, however, remained in Charleston where it was sold to a wholesale grocer at that place. The plaintiff knew that such shipments would not remain permanently in Charleston except such starch as might be sold to F. W. Wagner, a wholesale grocer in Charleston. The Court said (page 151):

> "The essential nature of the movement, and not the form of the bill of lading, determined the char-

acter of the commerce involved. When the character of interstate commerce has once been acquired it continues until the load reaches the ultimate point of destination intended, which does not necessarily depend upon the form of the bill of lading or whether there has been a transshipment en route with a new bill of lading for the balance of the journey."

Ala. Great Sou. Ry. Co. v. McFadden, 232 Fed. 1000; Affirmed 241 Fed. 562;
A. T. & S. F. Ry. v. Harold, 241 U. S. 371;
Western Union Tel. Co. v. Foster, 247 U. S. 105;
R. R. Com. of La. v. T. & P. R. R. Co., 229 U. S. 336.

III

DECISIONS OF THE INTERSTATE COMMERCE COMMISSION

The decisions of the Interstate Commerce Commission throw some light upon this case, and although they are not controlling, they are persuasive. The record shows that a great deal of fuel oil is shipped to the phosphate mines in the Bone Valley District of Florida. Originally these mines used coal, and this coal was brought by vessels to Port Tampa and thence reshipped to interior points in Florida.

In *Tampa Fuel Company v. Atlantic Coast Line R. R. Co.,* 43 I. C. C. 231, there were involved shipments of coal moving by vessel from North Atlantic ports to Port Tampa and thence reshipped by rail to various interior Florida points. The complaint alleged unreasonableness of certain handling and wharfage charges of the rail carriers at Port Tampa, as well as the local rates for the rail haul therefrom. The re-

port showed that the coal moved from North Atlantic ports to Port Tampa in *privately chartered vessels;* that the complainant had an agent at Port Tampa who would notify the defendant's agents when a particular vessel was expected to arrive, and would issue instructions as to what portion of the coal should be shipped to Tampa and what portion to other points in the interior of the state. The Railroad Company (this defendant) in that case questioned the jurisdiction of the Commission over the rail movement from the port but the Commission said:

> "The question of our jurisdiction was raised by defendant. The shipments to Tampa did not move under any common control, management or arrangement for continuous carriage or shipment. The record shows, however, that when each cargo of coal was delivered to a water carrier at a north Atlantic port the coal started in transportation, water and rail, to points in Florida beyond Port Tampa. The movement by rail from Port Tampa carried out the original intention entertained at the time the vessels were loaded at the north Atlantic ports. The rail movement from Port Tampa to Tampa, and the handling and wharfage at Port Tampa in connection therewith, as part of interstate transportation, are subject to our jurisdiction."

Later there came before the Commission the case of *International Agricultural Corporation v. Director General,* 60 I. C. C. 726; decided March 5th, 1921, *where the question was raised as to the reasonableness of the rates on fuel oil in tank cars moving from Tampa and Port Tampa, Florida, to points in the Bone Valley District of that state.* This oil was brought into Tampa and Port Tampa by vessel from points in Mexico

and from Texas and other states, was pumped into tanks at that point, and was shipped therefrom in tank cars by rail. *In other words, the Commission had before it the identical question which this Court has in the case at bar,* the transactions being the same. The shippers themselves in that case filed their complaint before the Interstate Commerce Commission, thus recognizing the jurisdiction of that Commission in the premises, and this jurisdiction was not questioned by the carriers. The Commission took jurisdiction of the case and adjudicated the reasonableness of the rates, saying, among other things, in its report:

> "The complaint was brought before this commission on the basis that the rail transportation within the State of Florida is a part of interstate or foreign commerce; and defendants concede our jurisdiction over the rates assailed" (page 111).

This case before the Commission gives a history of the use of this fuel oil in the Bone Valley District of Florida, and it is this fuel oil that the defendant contracts with the owners of the phosphate mines in the Bone Valley District to supply upon contracts made by the year. It will, therefore, be seen that both shippers and defendants conceded that the rates on such oil from Port Tampa were governed by tariffs of the Interstate Commerce Commission.

It is rather singular that the plaintiff Oil Company in this case should claim any refund or overcharge on shipments of fuel oil from Port Tampa to the Bone Valley District of Florida, where it ships fuel oil upon contract to the phosphate mines. The contract (Plaintiff's Exhibit No. 7, R. 121) clearly shows that the freight on this oil from Port Tampa to the phosphate

mines of Florida in the Bone Valley District, is paid by the purchasers from the Oil Company. The sample of contract placed in evidence shows an agreement dated October 31st, 1924, between the plaintiff Oil Company and the Florida Phosphate & Mining Corporation, Bartow, Florida, for 50,000 barrels of Mexican fuel oil for delivery during the period of twelve months from November 15th, 1924, and the price to be paid is $1.35 per barrel of 42 U. S. standard gallons in *tank cars f. o. b. Port Tampa, Florida.* The phrase "f. o. b." means free on board of vessel, car or other conveyance which is to transport the goods to the buyer and means, in ordinary business dealings, that the buyer pays the freight from the point at which the shipment is delivered free on board cars. Now, it was the Phosphate Companies, the buyers from this plaintiff in this case, who so strenuously contended that the Interstate Commerce Commission had jurisdiction in the case of *International Agricultural Corporation, supra.*

An examination of the record in that case discloses that the following language was used in paragraph 4 of the complaint:

> "Such fuel oil so shipped from Tampico and other points in Mexico to points in the 'Bone Valley District' of Florida via Tampa and Port Tampa is known and intended at the time of shipment from Mexico to find its destination beyond such ports of entry. The details of physical handling at the ports of Tampa and Port Tampa, the method of billing and the transference of title at such ports, are but incidents of a movement from Mexico to points in the interior of Florida. Interruption of through movement occurs at the Florida ports of entry in order to transfer the oil from tank steamers to cars, and temporary stor-

age at the ports is resorted to for such purpose as well as to equalize the incoming shipments with the periodical requirements of customers in the 'Bone Valley District' and elsewhere.

"Complainants, therefore, aver that such transportation of fuel oil by railroad from Tampa and Port Tampa, Florida, to points in the 'Bone Valley District' of Florida is but the substantial continuation of an original movement from an adjacent foreign country, and the rate charged for such rail haul from the ports of entry is the rate applicable to the movement of foreign commerce from an adjacent foreign country to a point within the United States, within the definition and scope of Section 1 of the Act to Regulate Commerce, as amended from time to time."

In the brief in that case counsel for the Phosphate Companies used this language (page 210) in urging their contention before the Interstate Commerce Commission that the entire movement from Mexico to the phosphate mines in the Bone Valley District was interstate commerce:

"It appears in this case that the oil used is Mexican fuel oil which is brought to Port Tampa in vessels owned by the Oil Company. There the oil is unloaded and placed in storage tanks, from which it is shipped on a new bill of lading by railroad to the phosphate district. Of the total quantity of fuel oil thus brought into Port Tampa between 85 per cent and 95 per cent is intended for and destined to mines in the phosphate district. Temporary storage at the port is resorted to in order that the supply of oil may be equalized with the daily needs of the rock industry.

"The contracts between the Oil Companies and the phosphate rock miners contain provisions clearly indicating the intention that the oil fur-

nished shall be Mexican oil. Thus, in each of the contracts, provision is made for the payment of export duties that may be imposed by the authorities of the state of Mexico. * * * Thus the conclusion is self-evident that at the time the oil leaves Tampico, or other points in Mexico, it is known the ultimate destination is the phosphate district.

"Under such circumstances there cannot be any serious question that the Commission has jurisdiction over the rail rates from the ports. Such rail haul is but the substantial continuation of the original movement from a foreign country."

A late decision by the Interstate Commerce Commission is *Alexander Grocery Co. v. Beaumont, Sour Lake & Western Ry. Co.*, 104 I. C. C. 155, decided November 9th, 1925, which involved shipments of green coffee from New Orleans, Louisiana, to La Grange, Austin and San Antonia, Texas, and from Galveston and Houston, Texas, to Austin and San Antonio, Texas. The defendants challenged the jurisdiction of the Commission as to the movement from Galveston to Houston upon the ground that the transportation was intrastate commerce.

The Commission says (page 156):

"Defendants in the title case challenge our jurisdiction over the shipments from *Galveston and Houston* on the ground that the transportation is intrastate. Green coffee is not produced in the United States, Generally speaking, the foreign producers sell their products to importers located at the ports of entry, and these importers distribute the coffee to roasters located at the ports and interior points. Upon arrival at the ports the coffee is stored in warehouses to await reshipment beyond. *The temporary storage at the ports does*

not divest this traffic of its foreign character acquired at the time it begins its journey from the foreign port. The movement to the Gulf ports is only a step in its transportation to the interior destinations."

How similar the situation in that case is with the case at bar!

IV

CASES RELIED ON BY THE OIL COMPANY DISTINGUISHED

In the Courts below the plaintiff relied mostly upon tax cases, although he cited some other cases, such as *Gulf, Colorado & Santa Fe v. Texas*, 204 U. S. 403, and *Sou. Pac. Ry. v. Arizona*, 249 U. S. 472 (the circus case), and *Arkadelphia Co. v. S. L. & S. W. R. R. Co.*, 249 U. S. 134.

The underlying principles covering the two kinds of cases are totally different and the tax cases throw but little light on this subject.

The decisions in the tax cases are all bottomed on this principle:

> "The Interstate Commerce Clause of the Constitution does not give immunity to movable property from local taxation which is not discriminative, *unless it is in actual continuous transit in interstate commerce.*" (*Champion Realty Co. v. Brattleboro*, 260 U. S. 367).

The decisions in the rate cases, however, on the other hand are founded on the principle that Congress has *exclusive* control to prescribe rates and to regulate interstate commerce.

In *Railroad Commission of Ohio v. Worthington*, 225 U. S. 107, the Court says:

> "It is not necessary to review the cases in this Court which have settled beyond peradventure that the national government has exclusive authority to regulate interstate commerce under the Constitution of the United States; nor to do more than reaffirm the equally well-settled proposition that over interstate commerce transportation rates the state has no jurisdiction, and that an attempt to regulate such rates by the state or under its authority is void."

And at page 111 the Court says:

> "It is enough to now hold, as we do, that the establishing of the rate in question is an attempt to regulate interstate commerce, and is therefore beyond the power of the state or a commission assuming to act under its authority."

In *Texas, etc. R. R. v. Sabine Tram Co.*, 227 U. S. 112, it was said:

> "If the shipments were foreign commerce it is hardly necessary to make explicit the principle that the national dominion over them is supreme; and, conversely, if the shipments were not of that character, they were subject to the regulating power of the state."

In *Binderup v. Pathe Exchange*, 263 U. S. 291, heretofore noted in this brief, which involved the transportation of moving picture films, the defendants in error relied upon these same tax cases to uphold their contention that the commerce involved was intrastate commerce, but Mr. Justice Sutherland, in writing the opinion of the Court and holding that the commerce was interstate, disposed of this contention in the following words:

> "The cases cited by defendants in error, upholding state taxation as not constituting an interference with interstate commerce, are of little value to the inquiry here. *It does not follow that, because a thing is subject to state taxation, it is also immune from Federal legislation under the commerce clause.*"

The Court calls attention to the same thing in *Stafford v. Wallace*, 258 U. S. 495, at page 525, where, in distinguishing the cases relied upon by the appellant, it says:

> "The other cases relied on by the appellants are less relevant to this discussion that the *Anderson* and *Hopkins* cases. Some of them are tax cases. As to them it is well to bear in mind the words of the Court in the *Swift case*, (page 400): 'But we do not mean to imply that the rule which marks the point at which state taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress where such interference is deemed necessary for the protection of commerce among the states.'"

In the case of *Hanley v. Kansas City Southern Ry. Co.*, 187 U. S. 617, relied on by the Oil Company, the Court, referring to certain state decisions and saying that the state court misapplied a certain opinion of this Court, says:

> "But these decisions were made simply out of deference to conclusions drawn from *Lehigh Valley R. R. Co. v. Pennsylvania*, 145 U. S. 192, and we are of the opinion that they carry their conclusions too far. That was the *case of a tax* and was distinguished expressly from an attempt by a state directly to *regulate transportation* while outside of its borders."

The *Hanley case* was one involving the right of the state to fix rates for transportation.

The same differentiation of these tax cases is made in *Lemke v. Farmers Grain Co.*, 258 U. S. 50, where, in concluding that the commerce involved was interstate, the Court says:

> "Nor is this conclusion opposed by cases decided in this court and relied upon by appellants, in which we have had occasion to define the line between state and Federal authority under facts presented, *which required a defination of interstate commerce where the right of state taxation was involved, or manufacture or commerce of an intrastate character was the subject of consideration*" (Page 55).

The general rule as to validity of state taxation under the commerce clause is tersely put by Mr. Justice Brandeis in a dissenting opinion, concurred in by Mr. Justice Holmes, in the recent case of *Texas Transport & Terminal Company v. City of New Orleans*, 264 U. S. 150, as follows:

> "From the multitude of cases this general rule may be deduced. The validity of a state tax under the commerce clause does not depend upon its character or classification. It is not void merely because it affects or burdens interstate commerce. The tax is void only if it directly burdens such commerce, or (where the burden is indirect) if the tax *discriminates* against or *obstructs* interstate commerce" (page 154).

The same principle was stated another way by the Court in the case of *Swift v. United States*, 196 U. S. 375, where the Court said:

> "But it may be that the question of taxation does not depend upon whether the article taxed may or may not be set up in the course of commerce between the states, but depends upon whether the tax so far affects that commerce as to amount to a regulation of it."

Counsel for the Oil Company also relied upon the case of *Addystone Pipe & Steel Co. v. United States,* 175 U. S. 211. In that case the Court differentiates the tax cases and holds that the commerce involved is interstate, and says:

> "Decisions regarding the validity of taxation by or under state authority, involving sometimes the question of the point of time that an article intended for transportation beyond the state ceases to be governed exclusively by the domestic law and begins to be governed and protected by the national law of commercial regulation, *are not of very close application here.* The commodity may not have commenced its journey, and so may still be completely within the jurisdiction of the state for purposes of state taxation, and yet at the same time the commodity may have been sold for delivery in another state." (pages 245 and 246)

It follows, therefore, from what has been said that unless the traffic involved is in actual continuous transit in interstate commerce the state may lawfully tax it unless the tax is discriminating, but it also follows that the state is absolutely without any authority to prescribe rates for interstate traffic, whether such traffic is in actual continuous transit or not.

There is no inhibition in the Constitution against the taxation of interstate commerce by the state. The inhibition arises from the grant of power to Congress

and the intent manifested thereby to relieve interstate commerce from regulations or burdens imposed upon it by the states, and thus the validity of a state tax, therefore, depends upon, and is determined by, the question as to whether the tax is a regulation of, or imposes a burden upon, such commerce.

In the *Sonneborn case,* 262 U. S. 506, relied upon by the Oil Company, which was a case involving the question of taxation upon oil by the State of Texas, Mr. Chief Justice Taft says (page 508):

> "The question we have to decide is whether oil transported by appellants from New York or elsewhere outside of Texas to their warerooms or warehouses in Texas, there held for sales in Texas in original packages of transportation, *and subsequently sold and delivered in Texas* in such original packages, may be made the basis of an occupation tax upon appellants, when the state tax applies to all wholesale dealers in oil engaged in making sales and delivery in Texas.
>
> Our conclusion must depend on the answer to the question: Is this a regulation of, or a burden upon, interstate commerce?"

We submit that no such question as that asked by the Chief Justice in that case arises here.

If the oil in this case was shipped to warehouses of plaintiffs at its bulk stations at interior points in Florida and there afterwards stored and sold within the state, there is no question that such oil would be subject to a tax by the State of Florida; and upon such a state of facts existing the rates for the transportation from such interior point to other points where the oil might be sold, would be governed by intrastate rates.

In the *Sonneborn case,* however, in holding that a

part of the commerce was interstate, the Chief Justice says (page 515):

> "Many of the sales made by the appellants were made by them *before the oil to fulfill the sales* were sent to Texas. These were properly treated by the state authorities as exempt from state taxation. They were, in effect, contracts for the sale and delivery of oil *across state lines.* The solicit ing of orders for such sales is equally exempt. Such transactions are interstate commerce in its essence and any state tax upon it is a regulation upon it and a burden upon it."

Here the admitted facts are that the sales of fuel oil are made for a year at a time prior to the time the oil leaves Mexico, and while the contract is made f.o.b. Port Tampa, nevertheless the contract shows that the oil is for delivery at Royster, Florida, because Section 1 of the contract (R. 121) says:

> *"The oil is to be used exclusively at the plant of the buyer at Royster, Florida, and must not be resold by the buyer."*

And as to the other products, it is shown that they are not to be used at Port Tampa but at bulk and service stations at interior points *where sales and deliveries are made.* Therefore, there is nothing in the Sonneborn case, as we read it, that militates against the position taken by the defendant.

Plaintiff's counsel also rely upon the case of *Penn. R. R. v. Clark Bros.,* 238 U. S. 456, involving coal sold at the mouth of mines in Pennsylvania and which the purchaser was to carry into another state. The suit was brought to recover damages for inadequate and unjustly discriminatory car service and supply. Mr. Justice Hughes wrote the opinion and says (page 465):

"There is no controversy as to the course of business. The plaintiff sold to persons within and without the State of Pennsylvania. The coal was loaded on cars to be transported to various points of destination not only in Pennsylvania, but in other states. The transportation to other states absolutely depended upon a proper supply of cars, and it is manifest that unjust discrimination against the plaintiff in car distribution would improperly obstruct the freedom of such transportation, in which the plaintiff had a direct interest. And the question presented is whether unjust discrimination of this character is a subject which falls without the scope of the jurisdiction conferred upon the Interstate Commerce Commission; that is, whether there is an absence of such jurisdiction *merely because the plaintiff sold its product, which was to be transported to other states, f.o.b. at its mines.*

"This question must be answered in the negative. In determining whether commerce is interstate or intrastate, regard must be had to its essential character. Mere billing, or the place at which title passes, is not determinative. If the actual movement is interstate, the power of Congress attaches to it and provisions of the act to regulate commerce, enacted for the purpose of preventing and redressing unjust discrimination by interstate carriers, whether in rates or facilities, apply."

Notwithstanding that the movement of cars from a mine embraced interstate commerce, nevertheless the coal itself may have been subject to taxation under the laws of the State of Pennsylvania, so, therefore, we do not think this case is authority for the plaintiff's position.

Plaintiff also relies on the case of *Sou. Pac. Ry. Co. v. Arizona,* 249 U. S. 472. The facts in that case pre-

sent a different status than in this case. That case involved the movement of a circus which was traveling from point to point in Arizona, and giving exhibitions in various towns in that state. From Arizona the circus intended to go to some other state. The railroad claimed that the proper fare to charge was the interstate fare, because it was the intention of the circus company eventually to leave the state of Arizona, when it had finished its exhibitions, and go to some other state. This Court held that the movement was intrastate, and on page 477 says:

> "The mere intention of the shipper to ultimately continue his tour beyond the state of Arizona did not convert the contemplated intrastate movement into one that was interstate."

We do not dispute the correctness of this decision. To our mind it did not involve the purchase and shipment of an article in commerce from a seller in one state to a buyer in another. The circus had various contracts to give exhibitions in various towns within the state. Naturally, its sphere of activities was limited and it would eventually have to go to some other state for further business. Because it might at some future time eventually leave the state of Arizona could not change the character of its tour while within the state of Arizona. Each movement of the circus was an entirely separate and independent movement from the other. Its movements did not result, as in the case at bar, in a constantly recurring course of business flowing in interstate commerce.

Nor, do we think the case of *Arkadelphia Milling Co. v. S. L. & S. W. Ry. Co.*, 249 U. S. 134, has any relation to the facts in this case.

The Court in that case held that the movement of rough lumber from the forest to milling points in the state, followed by the forwarding of the finished product to points outside of the state did not constitute interstate commerce so as to render inapplicable the rough material intrastate freight rates prescribed by state authority, although experience indicated that 95 per cent of the product must be marketed outside of the state, where it was not intended, when the rough material left the woods, that it should be transported out of the state or elsewhere beyond the mill until it had been subjected to a manufacturing process that *materially changed its character, utility and value,* and that after the product was manufactured it was stored at the mill *to await a market, the manufacture and storage occupying five months on the average.*

Counsel for the Oil Company laid much stress upon this case in the court below and cited the following from page 151 of the opinion of the Court:

> "Upon the facts as stated, it is our opinion that the district court erred in treating the movement of the rough lumber from the woods to the milling point as interstate commerce. It is not merely that there was no continuous movement from the forest to the points without the state, but that when the rough material left the woods *it was not intended* that it should be transported out of the state, or elsewhere beyond the mill, until it had been subjected to a manufacturing process that materially changed its *character, utility, and value.*"

There is a marked difference, however, between the the facts in that case and the facts in this. Here the intention is plainly indicated by the course and conduct of the business done weekly and monthly and

yearly by the parties, and the products undergo no manufacturing process or change their character or utility.

Counsel also relied upon the case of *Missouri v. Gas Co.*, 265 U. S. 298, which involved the transportation of gas in pipe lines by defendant from Oklahoma and Kansas to Kansas City, Missouri, where it was sold and delivered to distributing companies, which latter companies then sold and delivered it to local consumers. The State of Missouri attempted to regulate the price at which the Kansas Company could sell this gas to the distributing companies in Missouri, and the only point in that case was as to whether that commerce was interstate. The Court held that the commerce was interstate, but on page 308 this language is used:

> "With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation."

And from this quotation Counsel for the Oil Company argue that the delivery of oil at Port Tampa and Jacksonville to the Oil Company ends its foreign or interstate movement. The sole question in that case was the *power* of the State of Missouri to regulate the commerce, which the Court declared to be interstate commerce, and in that case the Court certainly did not overrule any of the cases relied on by the defendants.

Another case relied upon by plaintiff is that of *Penn. R. R. Co. v. Knight,* 192 U. S. 21. The Pennsylvania Railroad operated a cab service in New York to and from the ferry landing at the foot of 23rd Street,

where passengers had to cross the river in order to get to New York. A tax was imposed on cab service by the State of New York and the railroad resisted it on the ground that the cab service was a part of interstate commerce. The railroad tickets did not include a coupon in payment for the cabs, nor did the passenger pay when purchasing his ticket for New York for the cab service. The Court held that the two services, that is, the railroad service upon the one hand and the cab service on the other, were separate and distinct.

The Court said, on page 20 (referring to the cab service):

> "It is independently contracted for and not necessarily connected therewith" (referring to railroad transportation).

And, therefore, it was held that the cab service was interstate business and subject to the state tax.

In referring to the case of *Gulf, Colorado & S. F. Ry. v. Texas*, 204 U. S. 403, also relied upon by counsel for the Oil Company, this Court, in the later case of *B. & O. S. W. RR. vs. Settle*, 260 U. S. 166, says:

> "The decision in *Gulf, Colorado & S. F. Ry. v. Texas*, 204 U. S. 403, relied upon by defendants in error is entirely consistent with these later decisions of this Court, *although some expressions* in the opinion are not" (page 193).

And so we think that none of the cases which the plaintiff has cited to sustain his position rule the question in issue in the case at bar, because the facts and the course of business conducted were altogether different.

V.

OIL CASES FROM NORTH CAROLINA AND FLORIDA.

Counsel for plaintiff will rely upon the case of *Atlantic Coast Line R. R. Co. v. Standard Oil Co. of New Jersey*, 12 Fed. (2d) 541, decided by the Fourth Circuit Court of Appeals, in which this Court denied petition for certiorari.

The record in that case is not as clear-cut and decisive on the facts as the record in this case. That case involved a question, similar it is true to the case at bar, whether petroleum products moving through the port of Wilmington, North Carolina, to interior points, brought into that port by steamer and placed into storage tanks and reshipped therefrom in tank cars and in barrels was interstate commerce.

The Court adopted the findings of fact of the District Judge, among which facts appear the following:

> "Complainant refines gasoline and oils at its refineries at Charleston, S. C., Baton Rouge, La., Baltimore, Md., and other places, and carries the products in its own tank vessels to Wilmington and other ports along the Atlantic seaboard. *At Wilmington it maintains an elaborate plant* for the transfer of these commodities from the vessels, *for the storage thereof and for selling them to customers* throughout the state of North Carolina.
>
> "Upon the arrival of a vessel, the gasoline or refined oil is pumped into the storage tanks through various pipe lines maintained for that purpose, *and the commodities are there held awaiting sale* to complainant's customers or transfer to substations maintined by complainant in various ports of the state.
>
> "*Distribution* of these commodities *from the*

Wilmington plant takes several forms. The principal movement is in tank cars, leased to complainant by a private car company, but hauled in common carrier service by the defendants. Some shipments are made in barrels loaded in box cars. Defendants are not now charging, and have not sought to charge, interstate rates on these barrel shipments. And other distribution is made by tank wagons to customers in Wilmington and nearby territory.

"Wilmington is one station within the jurisdiction of what complainant designates as its Charlotte branch, which embraces most of the State of North Carolina. These stations are supplied not only from Wilmington, but as occasion may require, from Norfolk, Va., Charleston, S. C., and other points at which complainant stores its products. A substation which today received its supplies from Wilmington may tomorrow receive them from Norfolk. During the two years prior to the hearing there were 231 such 'transfers' of stations from one supply point to another, and there have been as many as 35 such transfers at a single time. The executive offices of complainant in New York, N. Y., and Baltimore, Md., determine from time to time the source of supply for the several stations in the Charlotte branch; this matter not being within the jurisdiction of the Charlotte branch manager or the manager of the Wilmington plant. *This indicated that when the products arrive at Wilmington their destination is not definitely known, and this is* confirmed by the testimony" (page 542).

In the case at bar there are no such transfers of stations from one supply point to another. Again, in that case no situation was presented as here, where it is alleged and admitted that practically 95 per cent of fuel oil is sold to customers in Florida on yearly contracts made with customers before the oil is shipped

from Mexico, and where the oil company makes yearly contracts with producers of oil in Mexico to enable it to fill its contracts with customers, and where both sets of contracts require average *monthly deliveries,* and where, therefore, there is a constant flow of oil from the Mexican oil fields to interior Florida points simply passing *through* the ports in execution of *pre-existing contracts,* and where such arrangements had existed for four or five years. Nor yet, in that case is there any such admission, as here, that *none* of it is sold at the ports but that *all* is destined to other points in Florida. To the contrary, the Court finds as a fact that the defendant in the North Carolina case maintained an *elaborate plant at Wilmington* for the *storage* of the commodity and the *sale from there,* and that the commodity was *held at Wilmington awaiting sale or transfer to substations,* and that the *distribution* of the commodities *was from Wilmington.* The Court does not distinguish the case in principle from the *Sabine Tram* case. It simply refers to the *Tram case* and others, by saying that those cases "deal with shipments made to the seaboard for export, and hold that the shipments are to be treated as shipments in foreign commerce from the time that their movement to their foreign destination commences, and that the character of the shipment is not affected by such incidents of transportation as intrastate billings, reconsignment, reshipment at port or milling in transit" (page 547).

The Court says on page 547:

> "But none of these cases have any application here because in all of them the articles of commerce were *unquestionably* in the course of their

> journey to foreign destinations, and the question involved in all of them was whether the character of commerce was changed by certain incidents of the journey. Here the journey of the cargo of oil as a cargo has ended. It had come to *rest* at point of *distribution*, and its identity had been lost."

In this statement the Court assumes as a fact that which was the question in dispute and assumes as a fact what the Texas Court held was not a fact. The Court attempts to distinguish that case from the case of *Binderup v. Pathe Exchange, supra, Stafford v. Wallace, supra,* and *Swift & Co. v. United States, supra,* by simply stating that they are not in point.

The Court says, page 547:

> "That there is a difference in the principles applied to the two classes of cases is apparent at a glance. In the one case it is the essential nature of the *business* which governs; in the other it is the essential nature of the particular *transportation* involved."

The Court differentiates the two cases by differentiating the words "business" on the one hand and "particular transportation" on the other. In the *Stock Yards case* there was transportation and that transportation was held to be interstate commerce. There the business was held to involve interstate commerce. If it involved interstate commerce, the transportation, therefore, of that business was interstate commerce, and the rates applicable upon interstate commerce are those which the Interstate Commerce Commission has approved under authority of Congress.

There the Court finds as a fact that the shipments came to rest at the *port* and the port was the point of *distribution.* Here, however, the uncontradicted facts are that the products are not sold from Port Tampa,

which is only a small agency with few men employed, but the *sales* and *deliveries* are made from bulk or *service stations,* except fuel oil, which is sold on yearly contracts made before shipments begin. There the distribution point was the port of Wilmington. Here the distribution points are the bulk stations at *interior towns or cities* in Florida.

That case, therefore, is not authority for this.

Counsel may argue that a petition for certiorari having been denied in that case, this Court, therefore, affirmed the Fourth Circuit Court of Appeals. That, however, cannot be.

In *Hamilton Shoe Co. v. Wolff,* 240 U. S. 258, the Court says (page 258):

> "It is, of course, sufficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed."

Plaintiff will also rely upon a like and similar decision from the Supreme Court of Florida, *State vs. Seaboard Air Line Ry. Co.* and *State v. Atlantic Coast Line R. R. Co.* (this defendant) 109 Southern 656, and not yet officially reported. From the decision in that case the defendant railroad companies sought from this Court review by petition for *certiorari,* which was granted March 21st, 1927, and the case is therefore, now upon the docket in this Court, being Nos. 505 and 506. The case was decided upon complaint, answer and demurrer and upon motion to file amended answers.

The Florida court held, following the tax cases, that the pretroleum and petroleum products stored in stor-

age tanks at Jacksonville and Tampa come to rest there; that the interstate movement ceases, and that subsequent shipments of it to points within the state are intrastate movements and subject to intrastate rates prescribed by the Florida Railroad Commission, and granted a peremptory writ of mandamus compelling this defendant and the Seaboard Air Line Railway to charge intrastate rates upon such products from Tampa, Port Tampa and Jacksonville to interior points in Florida.

Although the Court found as a fact, that the *reshipment* from the ports was *pursuant to the terms of contracts previously made to supply independent dealers at interior points, or to prearrangements for filling their own stations at interior points;* that the *destinations* of the products intended for *independent dealers* on contracts or for the oil companies' stations at *interior points* are *known and determined before the products leave the point of original shipment;* that the *quantity* of petroleum products to be shipped to each, that is, the independent dealers and the oil companies' *own stations* over a given period of time is determined by the terms of the contracts *made before shipment from the point of origin* for supplying customers, and *their own prearrangements for supplying their stations,* and that most of the property remains that of the oil company *during the entire course of transportation* from points of origin of *shipment to interior Florida points,* it yet fell into error by looking only at one part of the journey, that is the *last leg,* from the port to the interior points, and overlooking the *entire journey* from origin to destination, thereby making, as we maintain, the same mistake that the Circuit Court of Appeals of the Sixth Circuit

made in the case at bar. That was the same mistake made by the Minnesota Supreme Court in the case of *Hughes Bros. Timber Company v. State of Minnesota*, decided by this Court November 23rd, 1926, (not yet officially reported) where the question of the character of timber to be carried from Swamp River to Muskegon, Michigan, was involved.

> "All this characterizes what was being done in the drive between Swamp River entrepot and the mouth of Pigeon River. That was the beginning or the first leg of the interstate journey. The obligations by both parties accorded with that view. *The change in the method of transportation by floating to carriage on a vessel did not affect the continuity of the interstate passage*, if such a passage was intended by the parties and begun, any more than did shipment by local railroad bills of lading from a point in a state to a port of the same state, for shipment by vessel, to a foreign port, prevent its being interstate commerce."

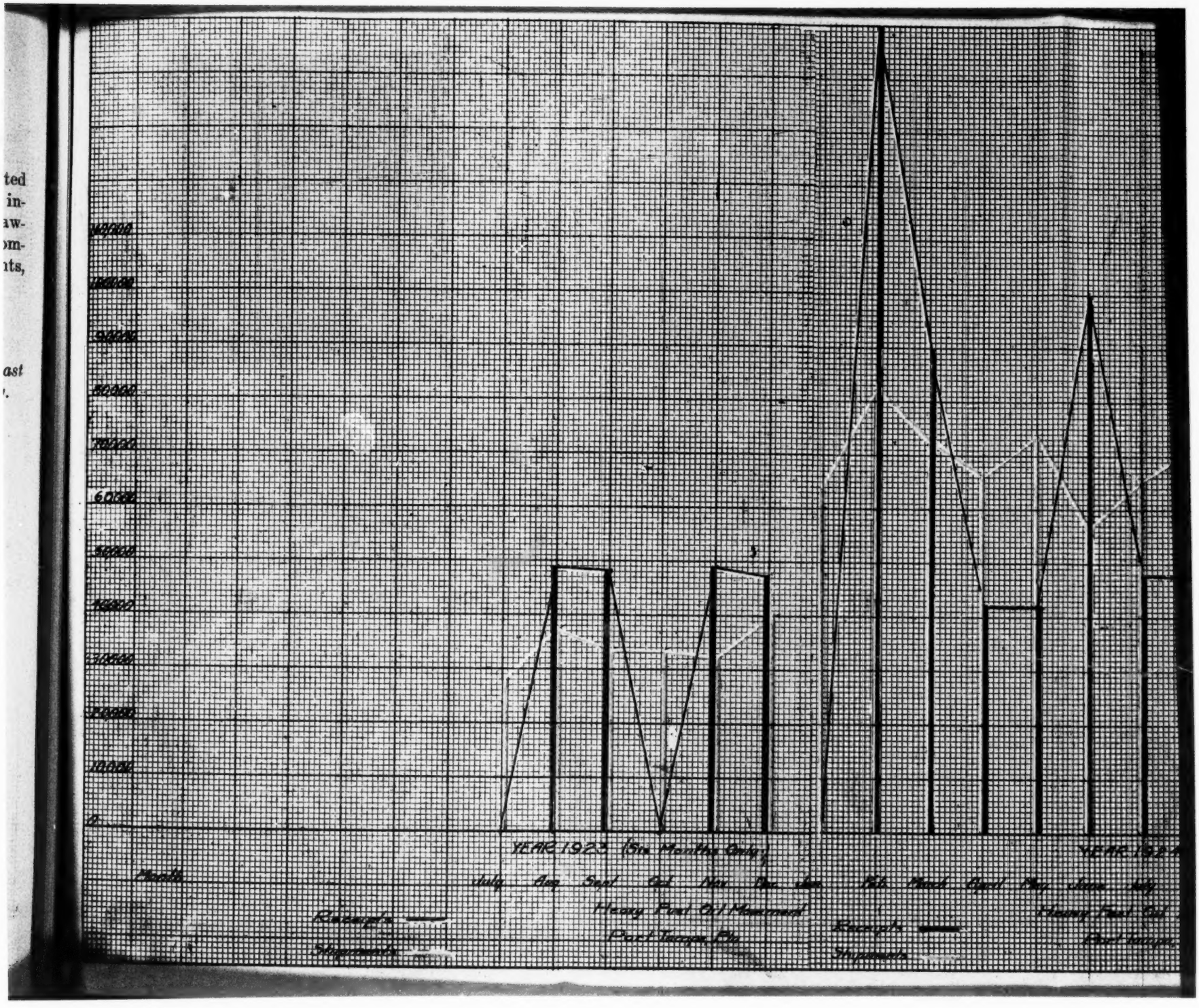
Citing the *Sabine Tram case, Sou. Pacific Terminal case, Worthington case, Settle case* and other cases.

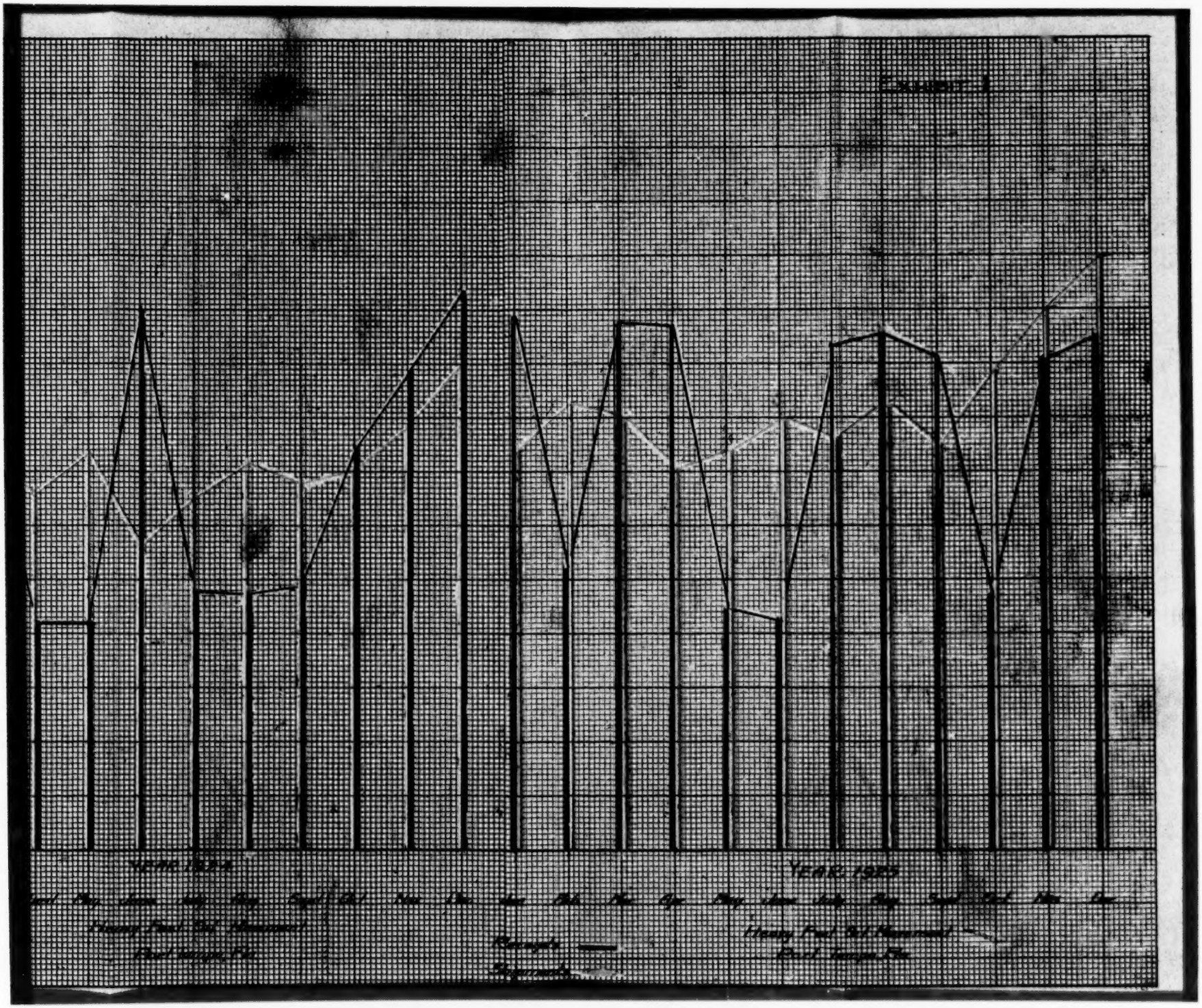
But the Florida Court went further than the Court below did in this case, for the Florida Court decided that *all* of the shipments, even *fuel oil*, and *gasoline* and *kerosene* from *Port Tampa* take intrastate rates, so that this defendant is in the predicament of being *prohibited* from charging interstate rates on any petroleum product from Port Tampa to interior points by order of the Florida Court, and being *required* under the decision of the court below to charge *interstate* rates on certain of these products. We say *required*, because if the commerce is interstate, defendant can apply only such rates, without violating the Interstate Commerce Act.

CONCLUSION

For the reasons given and upon the authorities cited herein, we ask that the commerce be declared to be interstate commerce, and that the rates governed by lawful tariffs filed with the Interstate Commerce Commission be the proper rates charged upon shipments, and that the bill be dismissed.

THOMAS W. DAVIS,
WILLIAM MARSHALL BULLITT,
Attorneys for Atlantic Coast Line Railroad Company.


YEAR 1923 (Six Months Only)
July
Aug
Sept
Oct
Nov
Dec
Jan
Feb
March
April
May
June
July
Heavy Fuel Oil Movement
Fuel Tanker Etc.
Receipts
Shipments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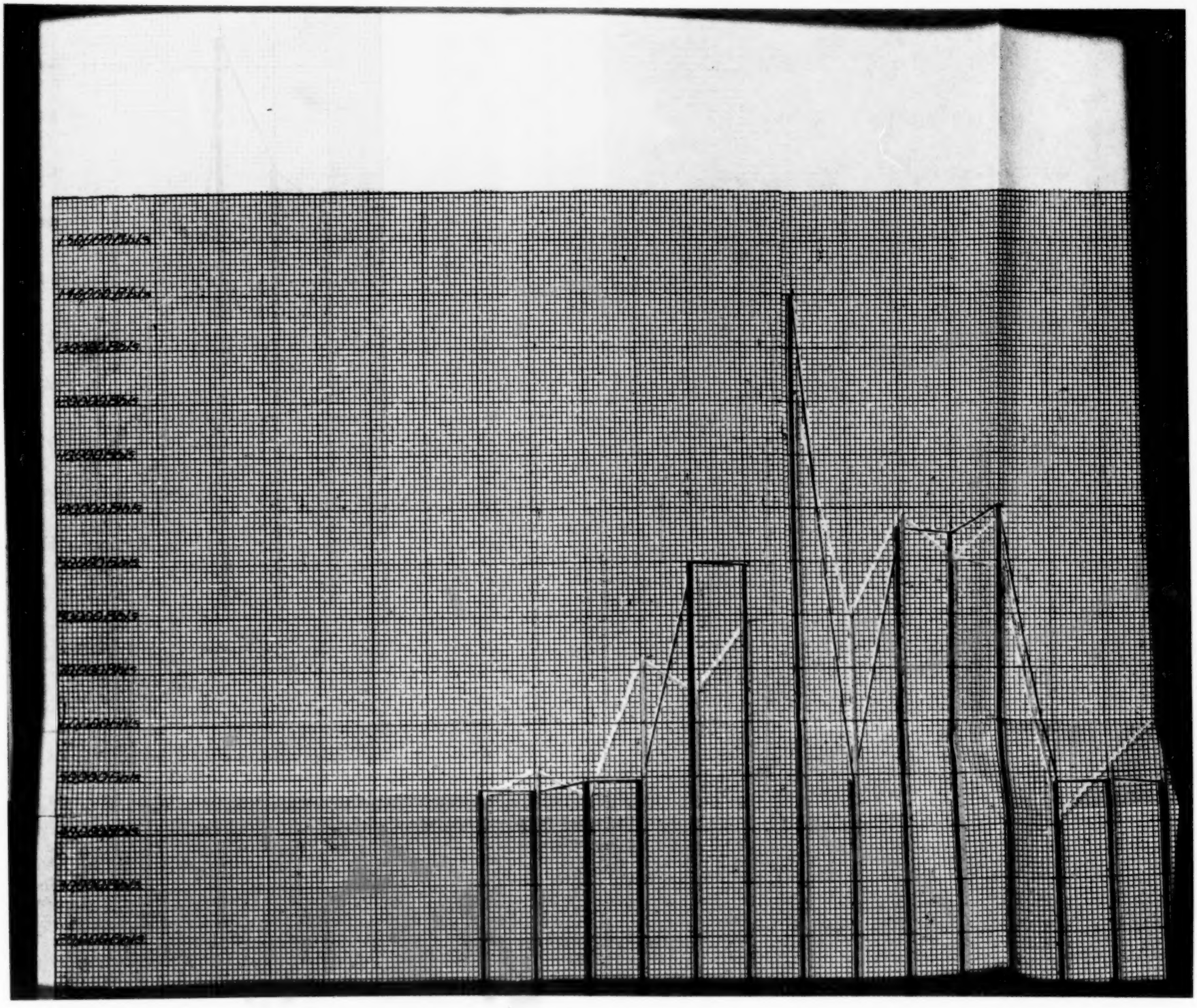
YEAR 1924
YEAR 1925



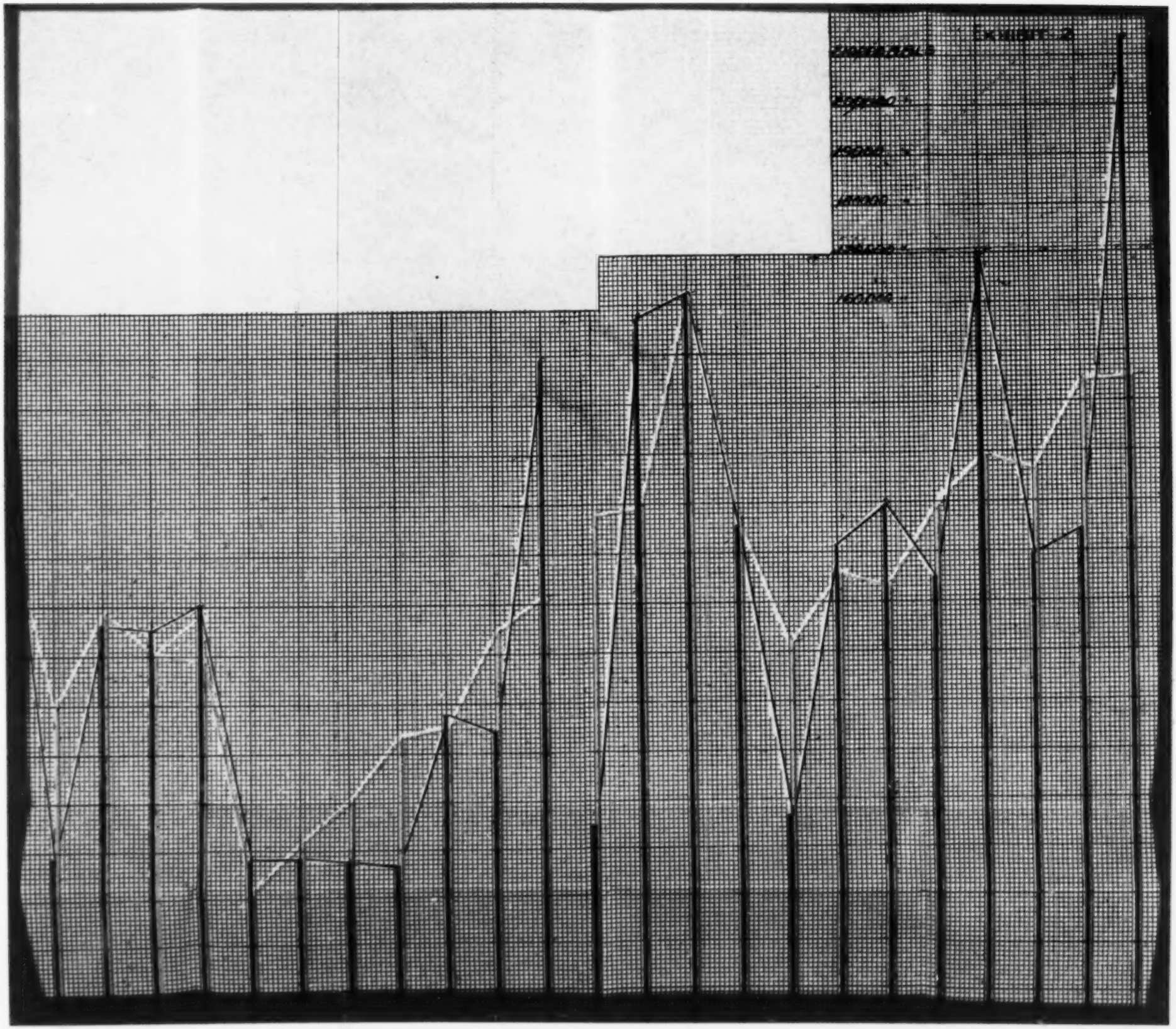
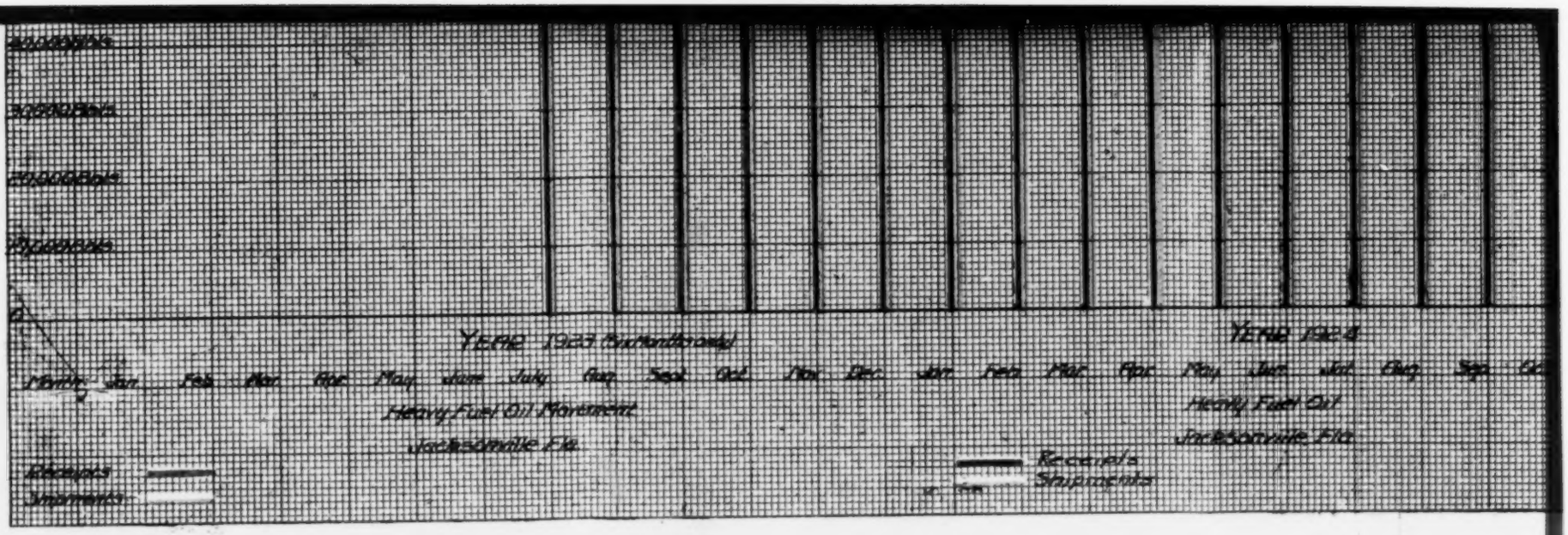
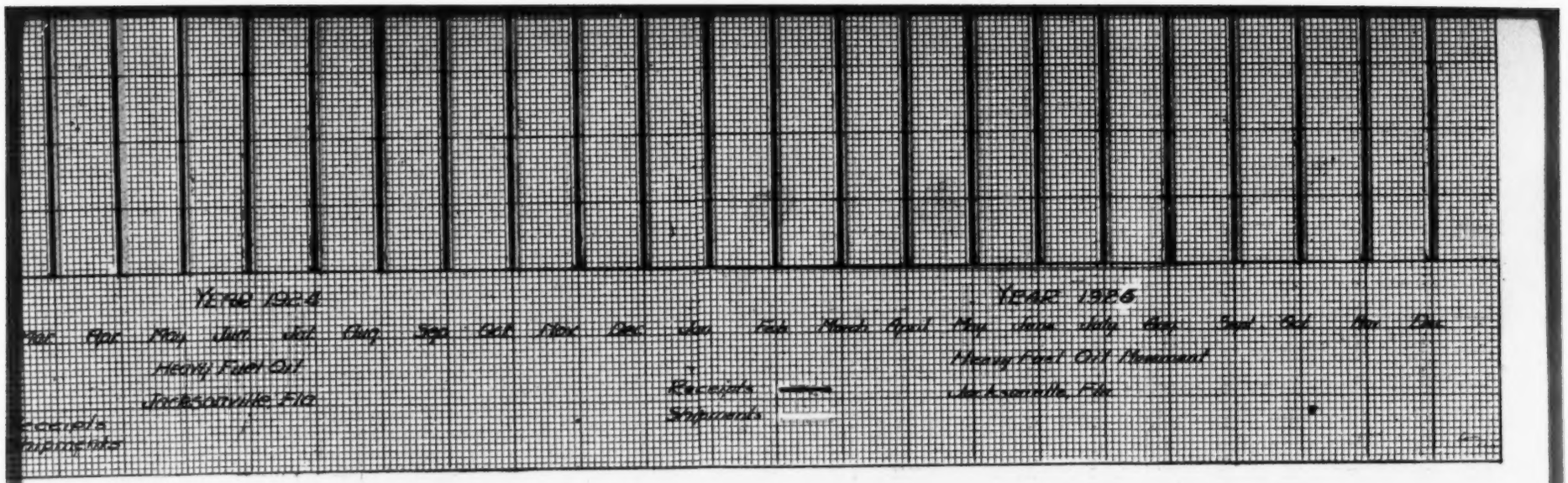
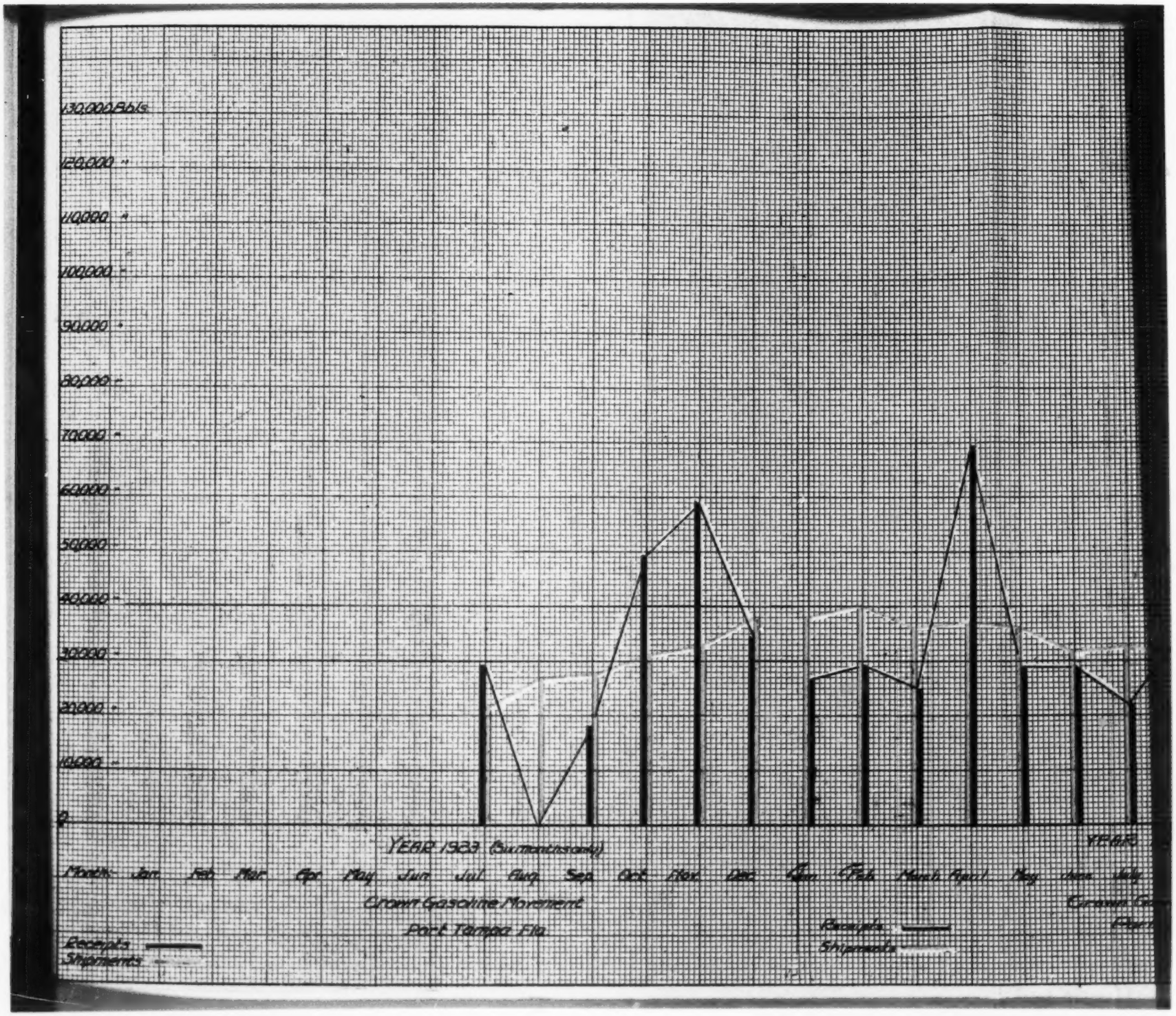


EXHIBIT 2


Months
Jan.
Feb.
Mar.
Apr.
May
June
July
Aug.
Sept.
Oct.
Nov.
Dec.
Jan.
Feb.
Mar.
Apr.
May
June
July
Aug.
Sept.
Oct.
Years 1923 Outstanding
Years 1924
Heavy Fuel Oil Movement
Jacksonville Fla.
Heavy Fuel Oil
Jacksonville Fla.
Receipts
Shipments
Receipts
Shipments


YEAR 1924
Heavy Fuel Oil
Jacksonville Fla.
YEAR 1926
Heavy Fuel Oil Movement
Jacksonville, Fla.
Receipts
Shipments


130,000 Bbls
120,000
110,000
100,000
90,000
80,000
70000
60000
50,000
40,000
30000
20000
10000
0
YEAR 1923 (Summarized)
Month: Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec
Crown Gasoline Movement
Port Tampa Fla.
Receipts
Shipments
YEAR
Jan Feb March April May June July
Receipts
Shipments

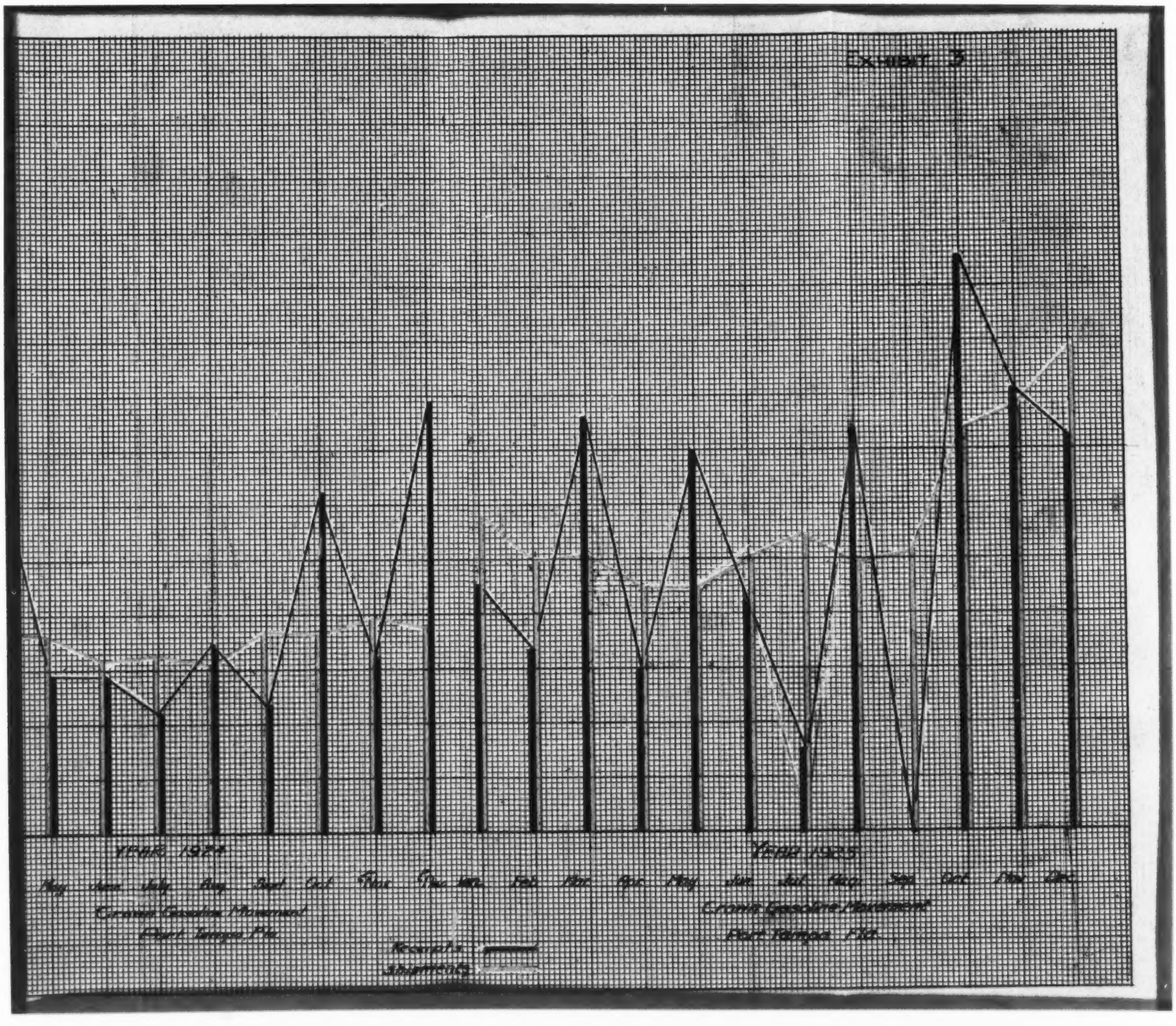
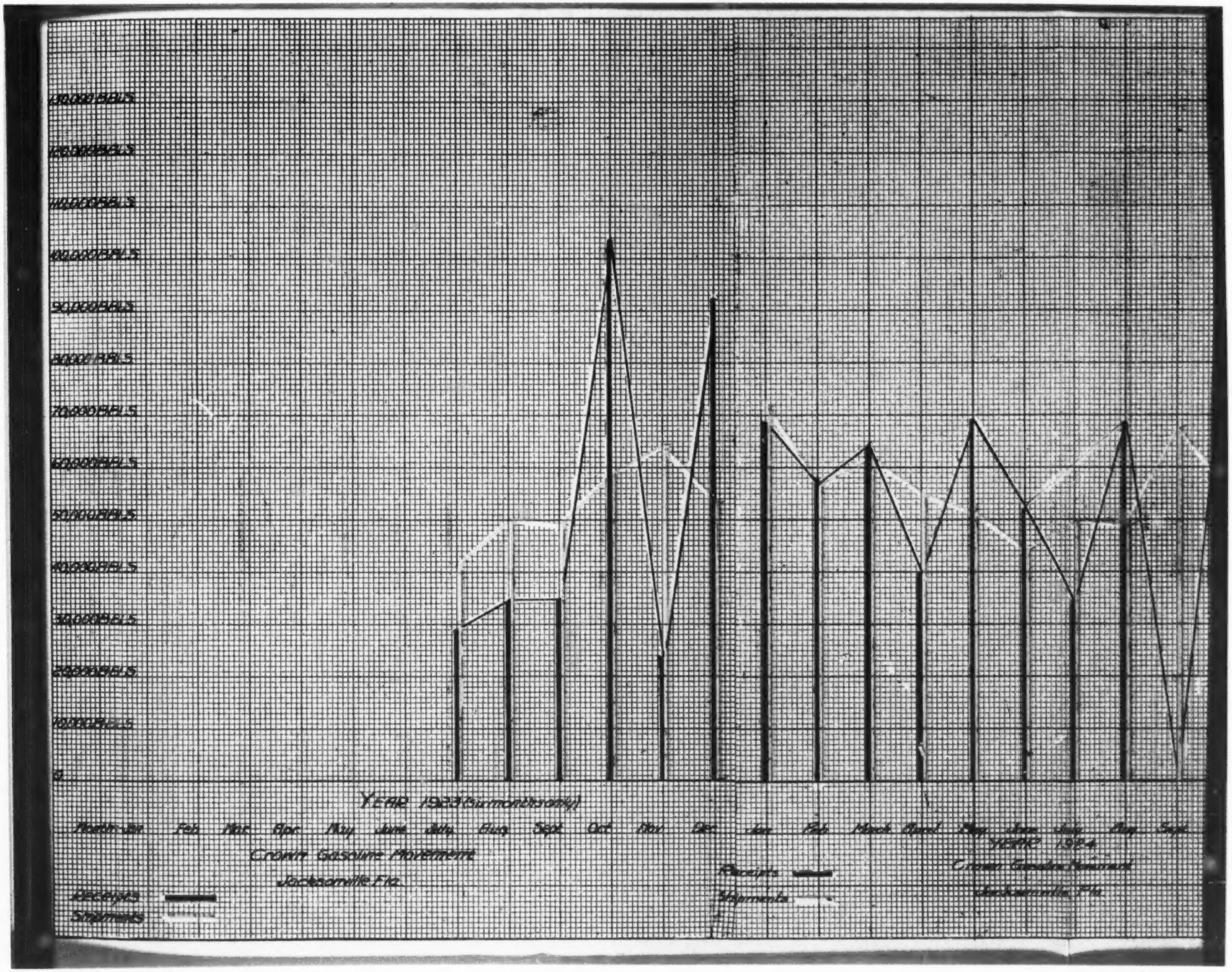


EXHIBIT 3
YEAR 1924
YEAR 1925
May June July Aug. Sept. Oct. Nov. Dec. Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec.
Current Gasoline Movement
Past Years File.
Current Gasoline Movement
Past Years File.


Year 1923 (Six months only)
Month Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec Jan Feb March April May June July Aug Sept
Year 1924
Crown Gasoline Movement
Jacksonville Fla.
Receipts
Shipments
Crown Gasoline Movement
Jacksonville Fla.

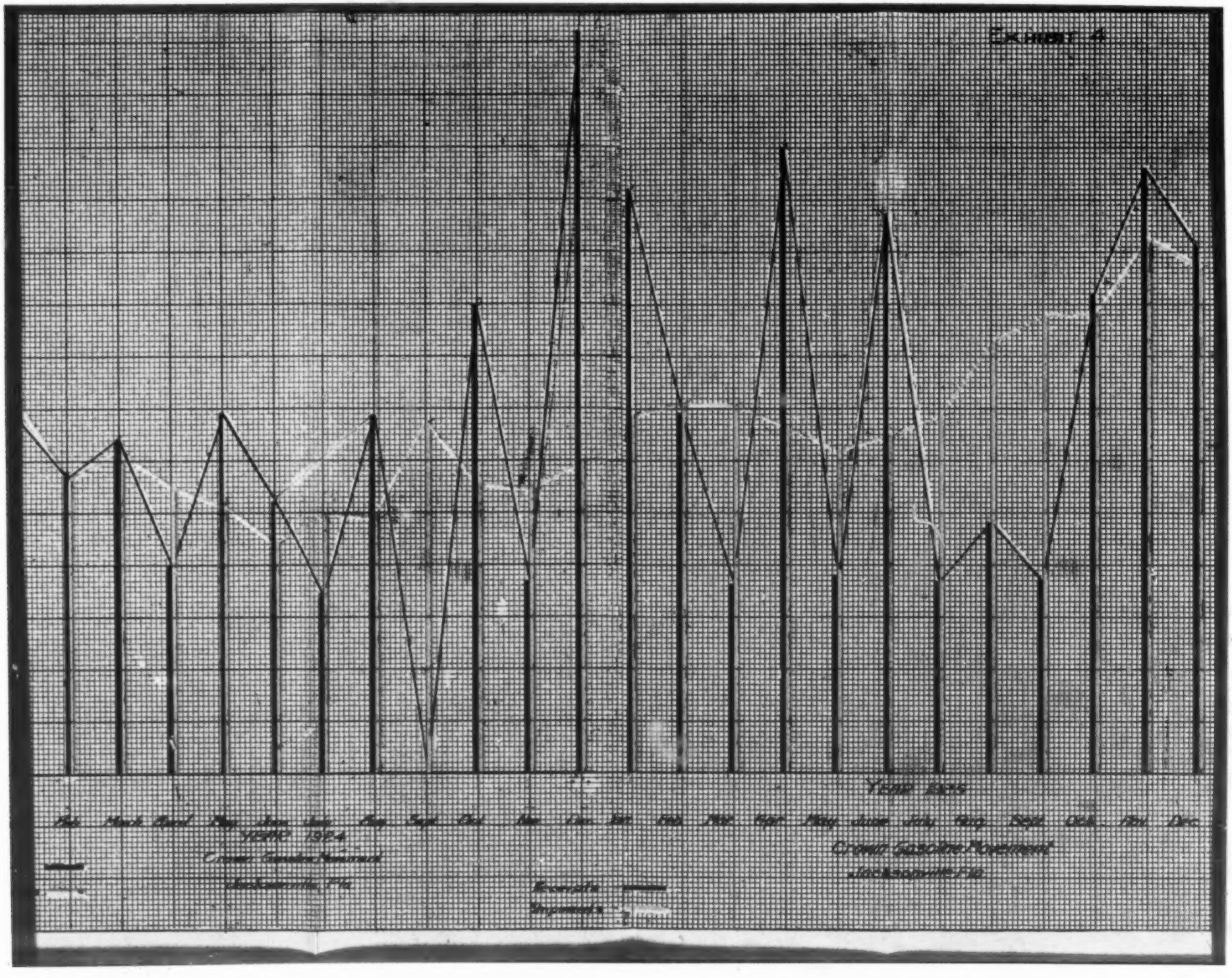


Exhibit 4
Year 1924
Year 1925
Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec Jan Feb Mar Apr May June July Aug Sept Oct Nov Dec
Crowell-Collier Publishing Co.
Jacksonville, Fla.
Crowell-Collier Publishing Co.
Jacksonville, Fla.

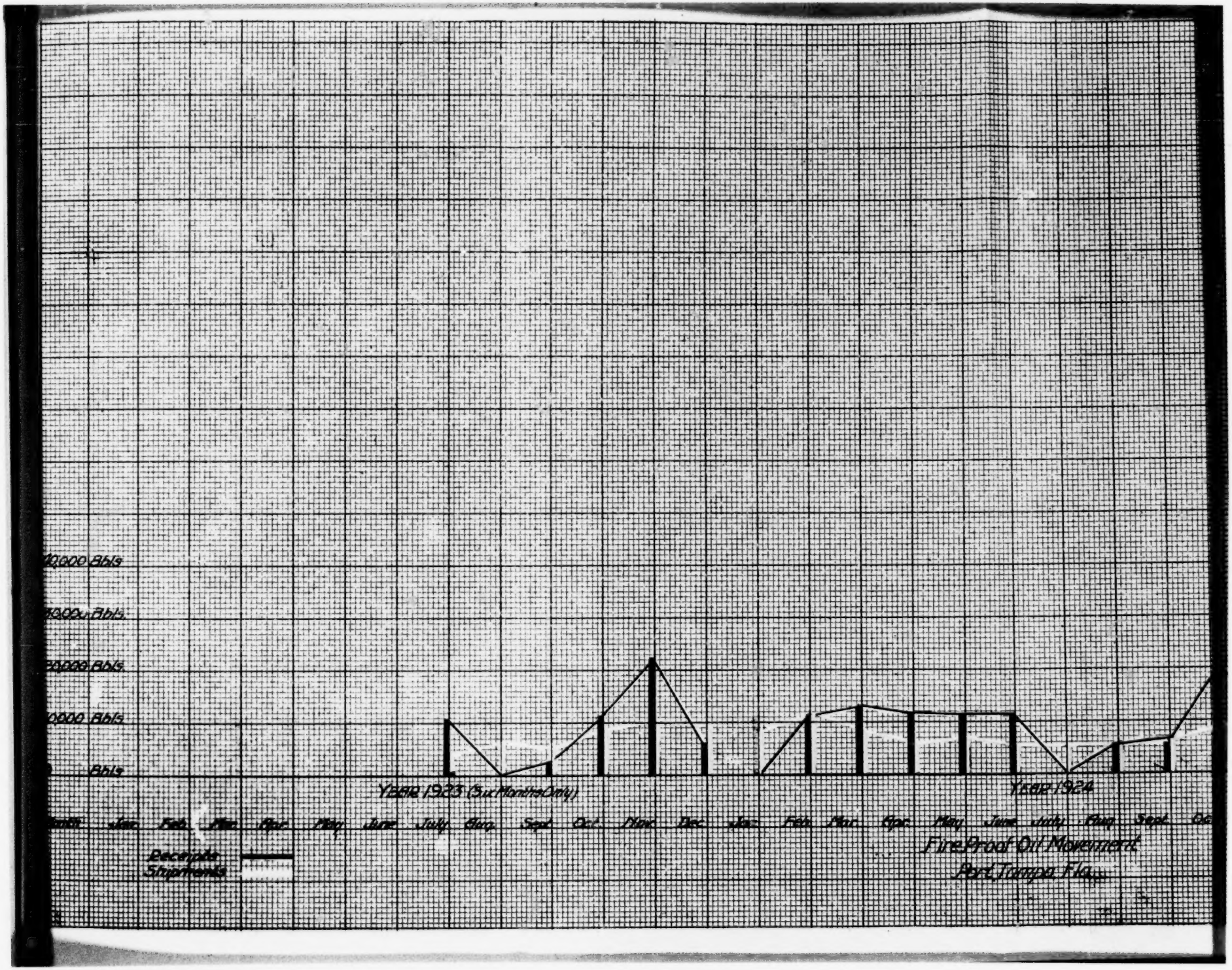
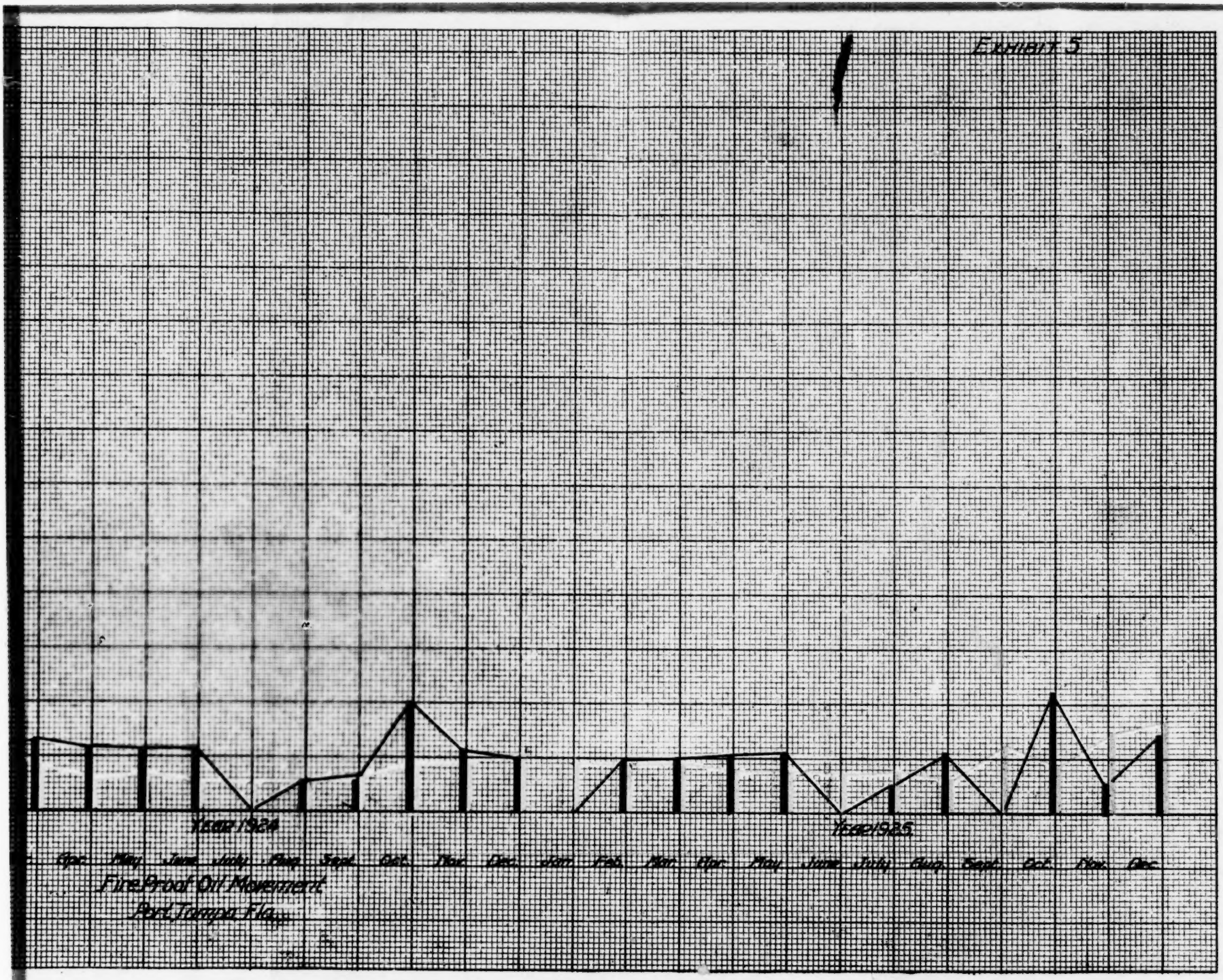
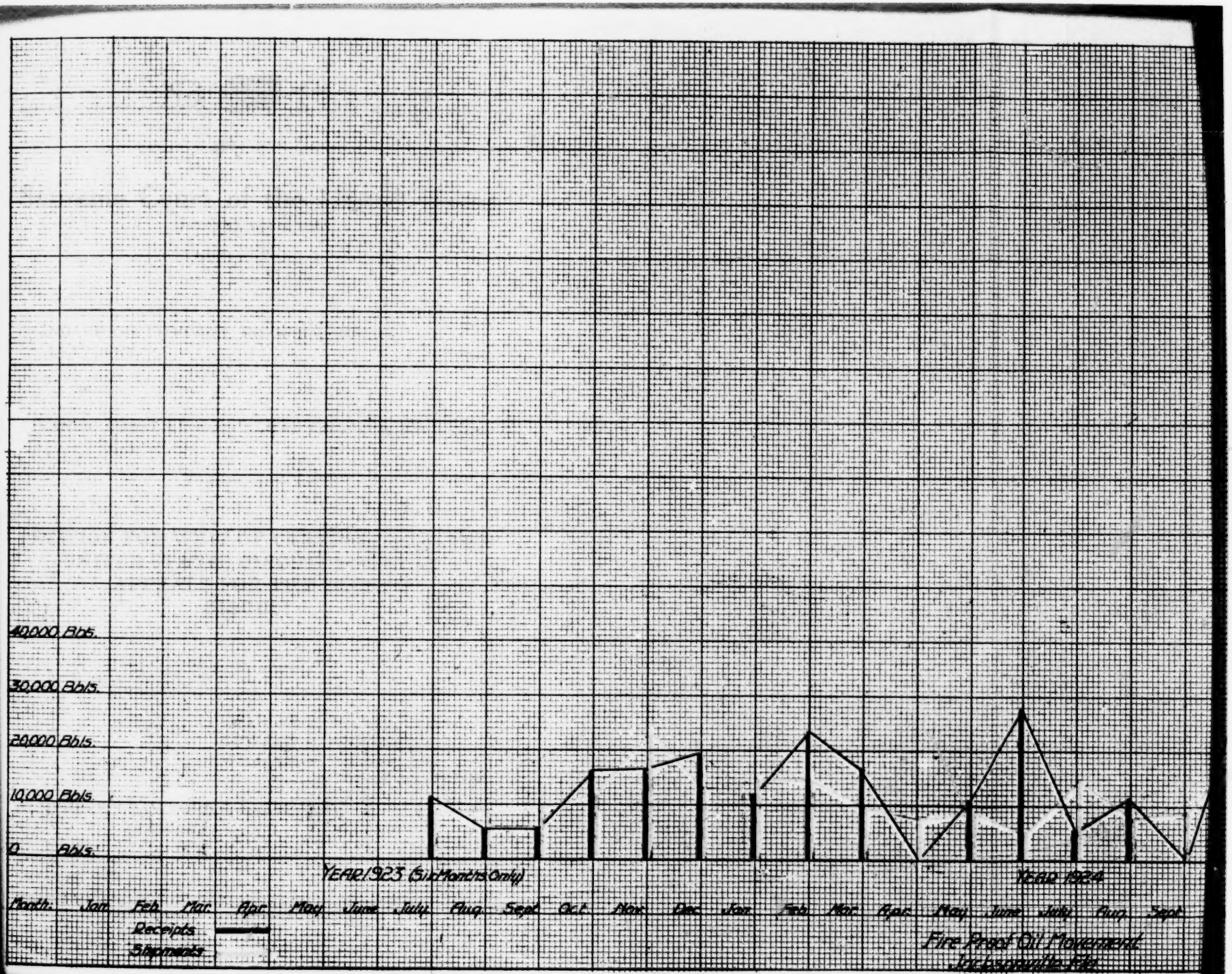

Bbls
Bbls
Bbls
Bbls
Bbls
Year 1923 (5 months Only)
Year 1924
Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec. Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct.
Records Shipments
Fire Proof Oil Movement
Port Tampa Fla.

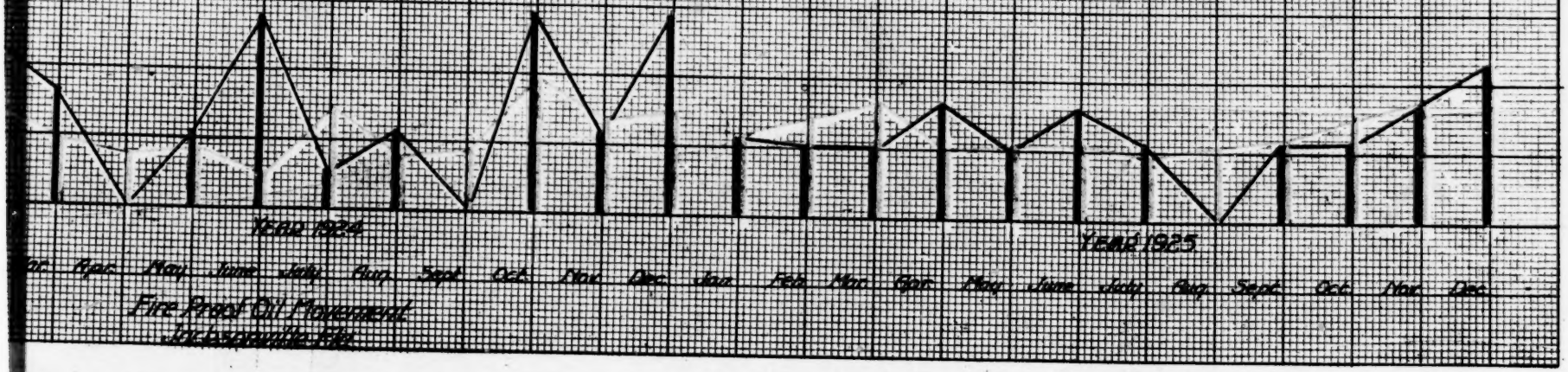
EXHIBIT 5


Year 1924
Year 1925
Apr.
May
June
July
Aug.
Sept.
Oct.
Nov.
Dec.
Jan.
Feb.
Mar.
Apr.
May
June
July
Aug.
Sept.
Oct.
Nov.
Dec.
Fire Proof Oil Movement
Port Tampa Fla.


40,000 Bbls.
30,000 Bbls.
20,000 Bbls.
10,000 Bbls.
0 Bbls.
YEAR 1923 (Six Months Only)
YEAR 1924
Month: Jan. Feb. Mar. Apr. May June July Aug. Sept. Oct. Nov. Dec. Jan. Feb. Mar. Apr. May June July Aug. Sept.
Receipts
Shipments

Fire Proof Oil Movement
Jacksonville, Fla.

EXHIBIT 6



Fire Proof Oil Movement
to Louisville Ky.

Office Supreme Court, U.S.
FILED
FEB 2 1927
WM. R. STANSBURY
Clerk

No. 177

Supreme Court of the United States

OCTOBER TERM, 1926.

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, - - - - - - Petitioner,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

CHARLES G. MIDDLETON,
EDWARD P. HUMPHREY,
WILLIAM W. CRAWFORD,
Counsel for Petitioner.

HUMPHREY, CRAWFORD & MIDDLETON,
Of Counsel.

Louisville, Kentucky,
January 26, 1927.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

RECEIPT.

Counsel for respondent, Atlantic Coast Line Railroad Company, hereby acknowledges receipt of notice of filing of the within petition for *certiorari*, with a copy of the petition and printed record, this January 26, 1927, at Louisville, Kentucky.

HELM BRUCE,
Counsel for Respondent.

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Brief Statement of Facts	5
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Conclusion	13

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State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Seaboard Air Line Ry. Co. and Atlantic Coast Line R. R. Co., 109 So. 656 (not yet officially reported) . 4, 13

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Supreme Court of the United States

OCTOBER TERM, 1926.

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, - - - - - - - - - *Petitioner,*

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner hereby respectfully applies for a writ of *certiorari* addressed to the Circuit Court of Appeals for the Sixth Circuit directing it to certify to this Honorable Court for review and determination the record in a certain cause numbered 4691, styled Atlantic Coast Line Railroad Company, Appellant, against Standard Oil Company, Incorporated in Kentucky, Appellee.

By its judgment therein rendered on December 17, 1926, said Circuit Court of Appeals affirmed in part and modified in part a judgment entered in favor of the petitioner by the United States District Court for the Western District of Kentucky.

The petitioner applies for a writ of *certiorari* from said judgment in so far as it *modifies* the judgment of the District Court. The respondent herein has likewise applied for a writ of *certiorari* in so far as the judgment of the Circuit Court of Appeals *affirms* the judgment of the District Court.

The question presented in the case was whether petitioner's petroleum products moving from Tampa, Port Tampa and Jacksonville, all in the State of Florida, to interior points in the State of Florida should pay intrastate rates or interstate rates. The suit was filed in the District Court for the Western District of Kentucky by the petitioner, the grounds of Federal jurisdiction being diversity of citizenship. The petitioner sought reparation and an injunction enjoining the respondent from enforcing any rate other than the lawfully published intrastate rate and the District Court adjudged that the traffic was intrastate traffic and that the petitioner was entitled to the relief sought.

The respondent appealed, and the Circuit Court of Appeals split up the traffic as between the cities of Port Tampa and Jacksonville, holding substantially that the traffic from Port Tampa was interstate and that the traffic from Jacksonville was intrastate. The District Court was directed to modify its decree accordingly.

The petitioner challenges the ruling directing the District Court to split up the traffic as hereinabove indicated. The petitioner takes the position that all of the traffic is intrastate and asks that the decree of the District Court be affirmed in its entirety.

GROUNDS FOR APPLICATION.

The petitioner asks for this writ upon the following grounds:

FIRST. Because the decision of the Circuit Court of Appeals in so far as it holds part of the traffic involved to be interstate traffic conflicts with three decisions of this Court—

a. Atlantic Coast Line R. R. Co. v. Standard Oil Company of New Jersey, 12 Fed. (2d Series) 541, in which case the Circuit Court of Appeals for the Fourth Circuit held that traffic in all substantial respects similar to that in the case at bar was intrastate traffic and in which case a petition for writ of *certiorari* was denied by this Honorable Court on October 18, 1926. (See Supreme Court Journal, Monday, October 18, 1926, at page 57).

b. Seaboard Air Line Ry. Co. v. State of Florida, *ex rel.* R. Hudson Burr, *et al.*, in which case the Supreme Court of Florida held that the same traffic as is involved in the case at bar was intrastate traffic and in which case a petition for a writ of *certiorari* was denied by this Honorable Court on November 23, 1926. (See Supreme Court Journal, November 23, 1926, at page 97).

c. Atlantic Coast Line R. R. Co. v. State of Florida, *ex rel.* R. Hudson Burr, *et al.*, in which case the Supreme Court of Florida held that the same traffic as is involved in the case at bar was intrastate traffic and in which case a petition for a writ of *certiorari* was de-

nied by this Honorable Court on November 23, 1926. (See Supreme Court Journal, November 23, 1926, at page 97.)

SECOND. Because the decision of the Circuit Court of Appeals in the case at bar in so far as it holds part of the traffic involved to be interstate traffic conflicts with the decision of the Circuit Court of Appeals for the Fourth Circuit in the case of Atlantic Coast Line R. R. Co. v. Standard Oil Co. of New Jersey, 12 Fed. (2d Series) 541, hereinabove referred to.

THIRD. Because the decision of the Circuit Court of Appeals in the case at bar in so far as it holds part of the traffic involved to be interstate traffic conflicts with the decisions of the Supreme Court of Florida in the two cases of State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Seaboard Air Line Ry. Co., and State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Atlantic Coast Line R. R. Co., 109 So. 656 (not yet officially reported), in which cases the Supreme Court of Florida held that the very traffic involved in the case at bar was intrastate traffic.

FOURTH. Because the decision of the Circuit Court of Appeals in the case at bar in so far as it holds part of the traffic to be interstate traffic conflicts with other decisions of this Honorable Court applicable to the question presented, and involves a question of importance which is in the public interest to have decided by this Honorable Court.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251.

Magnum v. Coty, 262 U. S. 159.

A brief statement of the facts will disclose the error of the Circuit Court of Appeals in holding that part of the traffic involved was interstate traffic.

BRIEF STATEMENT OF FACTS.

The petitioner does a general retail and wholesale oil business in the State of Florida. It is not a producing company and buys its products delivered to it by boat at Port Tampa and Jacksonville, at which points it maintains large storage tanks, the capacity of which is 619,075 barrels. The petitioner has nothing to do with the movement by boat of the petroleum products to the Florida ports and only acquires title to the same as and when the petroleum products are delivered into its storage tanks. The capacity of the tanks is largely in excess of any vessel making delivery of petroleum products at the points named, the capacity of the tanks being some thirteen times as large as the largest vessel. The capacity of the tanks is made large for two reasons —first, because the petitioner endeavors to maintain at all times an adequate supply of petroleum products for Florida business, and, second, because the petitioner takes advantage of the market conditions in petroleum products and business beyond its current needs when it feels the markets on such products are low and stores its excess purchases in these tanks. The tanks, therefore, constitute far more than a mere unloading device or means of shifting petroleum products from water to rail transportation.

In addition to the storage tanks at the ports named, the petitioner has 123 bulk marketing stations at inland points, 165 drive-in service stations, approximately 410 delivery vehicles, approximately 5,000 dealer customers, and several hundred thousand retail customers. In other words, the petitioner has the usual equipment of oil companies carrying on a similar business, and conducts its business in the usual way.

The petroleum products remain in the storage tanks at the ports for varying lengths of time, depending upon the exigencies of petitioner's business. In times of intense business activity, products leave the tanks at the ports rapidly. At other times they do not so leave. The products may stay in the tanks for a week or two weeks or they may stay there for two months or three months, depending entirely upon the demands of the petitioner's local business in the State of Florida. The water movement of the products into the tanks has nothing to do with the rail movement from the tanks. The products come to a complete state of rest upon being pumped from the boats into the tanks, and contracts with railroad companies for movements by rail are made after the products reach a state of rest in the tanks. A single cargo of oil is broken up into many different shipments by rail, and no one can tell at the time a cargo is unloaded into how many rail shipments it will be broken up, nor to whom it will go, to what point it will go or when it will go. The only thing that can be said with certainty is that it will move as, when and where the exigencies of the petitioner's business require it to move. An activity in one section

of the State may create a large demand for the products entirely unanticipated when the products reach the port, and the slowing down in business activity, of course, has the opposite effect.

The petitioner pays local taxes to the State of Florida on all products on hand in its tanks on the Florida assessing days.

While the products are subject to no manufacturing process in the State of Florida at the ports, yet everything is done that is necessary to be done in handling petroleum products. However, a large amount of lubricating oil is barrelled after it comes into Florida—about 3,500 barrels per month at Jacksonville and about 600 or 700 barrels per month at Tampa (R. 58). No particular tanks are used for products going to any particular section (R. 80). Gasoline is pumped into the gasoline tanks, kerosene into the kerosene tanks and fuel oil into fuel oil tanks, and the gasoline, kerosene and fuel oil may go to one place or they may go to another.

Some thirteen per cent of all the products coming into Jacksonville are used in that city and some twenty or thirty per cent of those products are shipped in interstate commerce to Southern points in Alabama and Georgia, the latter shipments, of course, properly taking the interstate rate. There is, however, no separation made in the tanks at Jacksonville between any of the products moving in the various ways mentioned. All of the oil in one tank may be used in Jacksonville, or it may go to inland points of Florida, or it may go to

Southern points in Georgia or Alabama, depending upon the exigencies of petitioner's business.

None of the petitioner's products are use at Port Tampa. Some of them, of course, the record not disclosing the exact percentage, are used at Tampa, which is nine miles farther on and which is reached by rail on a regular switching or tariff charge not in controversy.

In addition to the storage tanks at Tampa and Jacksonville, the petitioner maintains two warehouses at the points named in which it carries an assortment of petroleum products, such as lubricating oil in cans, candles, stoves and the lubricating oil which it actually barrels at these points.

The facts in regard to petitioner's method of handling fuel oil are somewhat different from those in regard to the other products and special mention must be made of that branch of petitioner's business. The record discloses that ninety-five per cent of fuel oil comes into the State of Florida on contracts theretofore made for its sale. In other words, ninety-five per cent of the fuel oil is sold before it reaches a state of rest in the storage tanks. Other than that, however, the fuel oil is handled exactly as the other products. It comes into the ports in large steamers and is pumped into the tanks. It may stay there for a short time or a long time, depending upon the demands of business. It may go to one point or it may go to another. There is no allocation as to cargoes or parts of cargoes, as to any point in Florida to which it may go, as to the time it may move out of the tanks, or as to the person to whom

it may go. There is no certainty as to its destination at the time of its arrival. It is held in storage tanks to meet the demand. The only certainty is that at some time it will move out.

Summarized, the petitioner does in Florida a strictly local oil business. It keeps on hand in its storage tanks sufficient supplies to meet the demands of its Florida customers. Those demands are made in the course of a trade that is strictly intrastate. Indeed, for years prior to June 15, 1923, the railroads applied the intrastate rate to all of this traffic. Since that time and up to the time this Honorable Court denied the petition for writ of *certiorari* in the case in the Florida Supreme Court already mentioned, the respondent and some of the other Florida roads applied the interstate rate. The record does not disclose what rate the respondent has applied since the petition for writ of *certiorari* was denied in the case from the Florida Supreme Court. It should be said, however, that the record does disclose that the Florida East Coast Railroad, the Southern Railway Company and the Louisville & Nashville Railroad Company have consistently applied the intrastate rates to all of this traffic.

Upon these facts the District Court held that the business done by the petitioner in the State of Florida was purely a local business and that the transportation to serve such business was intrastate transportation at intrastate rates. The Circuit Court of Appeals, however, divided the traffic and held part of it to be interstate traffic and the rest of it intrastate traffic. Of

course, the practical confusion from such a holding would be material and neither of the parties litigant is satisfied with that decision.

The Circuit Court of Appeals held that the fuel oil, gasoline and kerosene traffic from *Port Tampa* is interstate traffic and that the lubricating oil from Port Tampa moved in intrastate traffic, but that the gasoline, kerosene and lubricating oil moving from *Jacksonville* to Florida points was intrastate traffic, and that, as to the fuel oil from Jacksonville, the record was obscure and not sufficient for a satisfactory determination.

As we read the opinion of the Circuit Court of Appeals, the basis for this distinction between Port Tampa and Jacksonville is that no petroleum products are used at Port Tampa and that a substantial percentage of petroleum products are used at Jacksonville; that, accordingly, the stoppage at Port Tampa is a stoppage *in transitu*, and that any movement thereafter by rail is a continuation of the water transportation.

We submit that the distinction is not well taken. The petroleum products come to rest at Port Tampa just as definitely as they come to rest at Jacksonville, and the movement out from Port Tampa is just as distinct and separate a movement as the movement out from Jacksonville. The stoppage at both places is for *bona fide* business reasons of the petitioner, without which stoppages it could not conduct its business.

The distinction which the Circuit Court of Appeals makes was condemned in the case of General Oil Co. v. Crane, 209 U. S. 211, where the oil company had a bat-

tery of tanks at Memphis, Tennessee, and labeled some of the tanks "Oil Already Sold in Arkansas, Louisiana and Mississippi" and labeled others "Oil to be Sold in Arkansas, Louisiana and Mississippi," and then contended that the oil in the tanks so labeled was still moving in interstate commerce and that the delay in Memphis was merely for the purpose of reshipment; that the interstate transit was not ended, but only temporarily interrupted. This Court said, however, on page 230, that the oil had reached the destination of its first shipment and was held there, not in necessary delay or accommodation to the means of transportation, but for business purposes and profit of the company, that the interstate commerce had ended, and that the property was subject to the State tax laws of Tennessee.

We submit, therefore, that the distinction made by the Circuit Court of Appeals is not sound and that all of the traffic is intrastate.

BRIEF DISCUSSION OF GROUNDS FOR THIS APPLICATION.

That part of the decision of the Circuit Court of Appeals holding some of this traffic to be interstate traffic directly conflicts with the decisions of this Court and of the Circuit Court of Appeals for the Fourth Circuit. The case of Atlantic Coast Line Ry. Co. v. Standard Oil Co. of N. J., 12 Fed. (2d Series) 541, is exactly analogous to the case at bar. All the large oil companies doing business in states along the seaboard have adopted substantially the same methods. A read-

ing of the opinion of the Court in the case from the Fourth Circuit will disclose that the Standard Oil Company of New Jersey's method of doing business in North Carolina was in all substantial respects similar to that used by the petitioner. In the North Carolina case the Standard Oil Company of New Jersey had large tanks at Wilmington, North Carolina, and brought its products into that port by boats. It concentrated its products in large storage tanks at Wilmington and thereafter served its customers in the State of North Carolina from these tanks. There may be minor differences, but substantially the New Jersey Company carried on its business in North Carolina as the petitioner carries on its business in the State of Florida. The District Court in the North Carolina case held the traffic to be intrastate. The Circuit Court of Appeals in a very extensive opinion affirmed the decision of the District Court, and this Honorable Court denied a petition for writ of *certiorari*. Accordingly, the traffic in the North Carolina case has been held to be intrastate traffic by three Courts and we submit that there can be no doubt about the correctness of those decisions.

The Florida traffic is in all substantial respects similar to the North Carolina traffic and is intrastate traffic, and the ruling of the Circuit Court of Appeals for the Sixth Circuit holding part of it to be interstate traffic is in direct conflict with the decisions we have mentioned.

This view is doubly fortified when we come to consider the case from the Supreme Court of Florida which involved this very same traffic—State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Seaboard Air Line Ry. Co. and Atlantic Coast Line R. R. Co., 109 So. 656 (not yet officially reported). There the Supreme Court of Florida held this very traffic to be intrastate traffic and this Court has denied a petition for writ of *certiorari* in that case, and, as we understand, has also denied a motion for rehearing on that application.

We submit that the question is a closed question and that the Circuit Court of Appeals for the Sixth Circuit was in error in failing to follow the North Carolina case and the Florida case just referred to.

There is no valid ground for distinguishing the fuel oil from other petroleum products. A fuel oil case was presented to the Interstate Commerce Commission—Washington Dehydrated Food Co. v. Great Northern Ry. Co., 102 I. C. C. 363, decided on September 22, 1925. The facts in that case were exactly similar to the case at bar regarding fuel oil, and the Interstate Commerce Commission held the traffic to be intrastate traffic.

This petition should be granted also on the authority of the case of Missouri v. Kansas Gas Co., 265 U. S. 298. In that case the Kansas Natural Gas Company purchased gas in Oklahoma and Kansas, transported it in pipe lines to Missouri and sold it there to distributing companies. This Court held that the first sale, that is the sale to the distributing companies, was in

interstate commerce, but that the subsequent sale of the smaller companies to the consumers constituted intrastate commerce. The Court said, on page 308:

> "* * * *With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to State regulation.* * * *" (Italics ours.)

And again, on page 309:

> "* * * *The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State* and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. * * *" (Italics ours.)

The quotations apply exactly to the case at bar. The essential nature of the petitioner's business is that of supplying on demand local consumers in Florida and that business is a local business.

As said by this Court in the case of Southern Pacific Co. v. Arizona, 249 U. S. 472, the question whether a shipment is in interstate commerce is a question of fact, and we submit the facts in the case at bar show conclusively that the petitioner's business in Florida is strictly intrastate business.

The Circuit Court of Appeals has erroneously held that part of the traffic is interstate. That ruling conflicts with the North Carolina case from the Circuit Court of Appeals for the Fourth Circuit and with other cases from this Court. Accordingly, the petitioner asks for a writ of *certiorari.*

On the other hand, the Circuit Court of Appeals has held that part of the traffic, that is, the part from Jacksonville, is intrastate traffic. That ruling is correct and does not conflict with other decisions. Accordingly, it is submitted that the respondent, which has asked for a writ of *certiorari,* is not entitled to the same.

Accordingly, your petitioner pleads that the judgment of the Circuit Court of Appeals in so far as it holds that part of the traffic involved is interstate is erroneous and this Honorable Court should require the case to be certified to it for its review and determination and for a modification of the opinion and judgment of the Circuit Court of Appeals in the respect mentioned.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and all proceedings in the Circuit Court of Appeals in said case, styled Atlantic Coast Line Railroad Company, Appellant, versus Standard Oil Company, Incorporated in Kentucky, Ap-

pellee, Number 4691, to the end that said case may be reviewed and determined by this Honorable Court, as provided in Judicial Code, Section 240, and that this Honorable Court modify the opinion and judgment of the Circuit Court of Appeals in so far as the same holds part of the traffic to be interstate traffic, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Judicial Code and that the said judgment of the Circuit Court of Appeals, in so far as it reverses and modifies the judgment of the District Court of the United States for the Western District of Kentucky, be reversed, and that the judgment of said District Court in said case be affirmed by this Honorable Court.

And your petitioner will ever pray.

CHARLES G. MIDDLETON,
Counsel for Petitioner.

EDWARD P. HUMPHREY,
WILLIAM W. CRAWFORD,
Of Counsel.

STATE OF KENTUCKY,
COUNTY OF JEFFERSON. } ss.

Charles G. Middleton, being duly sworn, says that he is one of the counsel for the petitioner, Standard Oil Company, Incorporated in Kentucky, that he has had charge of this case for the petitioner from the inception thereof; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

CHARLES G. MIDDLETON.

Subscribed and sworn to before me by Charles G. Middleton this 26th day of January, 1927. My commission expires March 16, 1930.

ALICE JACKSON,
Notary Public, Jefferson County, Kentucky.

Office Supreme Court, U. S.
FILED
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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 176.

ATLANTIC COAST LINE RAILROAD COMPANY, Petitioner,

vs.

STANDARD OIL COMPANY (Incorporated in Kentucky), - - - - - - - - - Respondent.

No. 177.

STANDARD OIL COMPANY (Incorporated in Kentucky), - - - - - - - - - Petitioner,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Respondent.

BRIEF FOR STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), RESPONDENT IN No. 176 AND PETITIONER IN No. 177.

CHARLES G. MIDDLETON,
EDWARD P. HUMPHREY,
WILLIAM W. CRAWFORD,
Louisville, Ky.,
Counsel for Standard Oil Company, (Incorporated in Kentucky), Respondent in No. 176, Petitioner in No. 177.

September 23, 1927.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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Supreme Court of the United States

OCTOBER TERM, 1927.

No. 176.

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner,*

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No. 177.

STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), - - - - - - - - *Petitioner,*

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ATLANTIC COAST LINE RAILROAD COMPANY, *Respondent.*

BRIEF FOR STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), RESPONDENT IN No. 176 AND PETITIONER IN No. 177.

OFFICIAL REPORT.

This case is reported below in 16 Fed. (2d) 441. The District Court's opinion will be found in 13 Fed. (2d) 633.

The case came to this Court on petitions for certiorari to the United States Circuit Court of Appeals for

the Sixth Circuit. A petition for certiorari was filed by the Atlantic Coast Line Railroad Company February 2, 1927. Likewise on the same date a petition for certiorari was filed by the Standard Oil Company (Incorporated in Kentucky).

On March 21, 1927, both petitions were allowed and the case is now here upon its merits.

In view of the fact that two petitions for certiorari were filed and allowed, the parties will be hereinafter referred to for the sake of clarity as the Railroad Company and the Oil Company.

JURISDICTION.

The judgment which the parties ask to be reviewed was entered December 17, 1926, by the Circuit Court of Appeals for the Sixth Circuit (R. 132).

The Oil Company is a corporation organized under the laws of the State of Kentucky. It is a resident of the Western District of said State. The Railroad Company is a corporation organized under the laws of the State of Virginia, but is engaged in business in the State of Kentucky and has an agent in that State for the service of process. The amount involved in the controversy exceeds $3,000. The ground of Federal jurisdiction is diversity of citizenship. Judicial Code Sections 24 and 51. The jurisdiction of this Court is conferred by Judicial Code Section 240, as amended.

The Oil Company filed its bill in the United States District Court for the Western District of Kentucky against the Railroad Company. The bill charged that

the Railroad Company transports the Oil Company's petroleum products from Tampa, Port Tampa and Jacksonville, Florida, to interior points in that State; that prior to June 15, 1923, the Railroad Company charged State rates for that traffic, but that since said date the Railroad Company has charged interstate rates for the traffic handled. The bill alleged that the traffic was intrastate traffic and that the State rates only should be applied; further that the Railroad Company was wrongfully imposing the interstate rates. Accordingly the bill prayed for an injunction against the application of the wrongful interstate rates and against the application of any rate other than the lawfully published intrastate rate, and further prayed for an accounting.

The Railroad Company, in its answer, denied that the traffic was intrastate traffic and alleged that it was interstate traffic. The sole question involved therefore is as to the character of this traffic, whether it is intrastate or interstate.

The District Court held that the commerce involved was State commerce and that the proper rates to be applied were the intrastate rates. Accordingly, it entered a decree enjoining the future charging of any rate other than the intrastate rate.

The Railroad Company appealed from the decree to the Circuit Court of Appeals and the operation of the decree was suspended pending the appeal. The Circuit Court of Appeals reversed the judgment of the District Court in part and affirmed it in part, holding substantially that the traffic from Port Tampa to in-

terior points in Florida was interstate and that the traffic from Jacksonville was intrastate. Both parties then sought a review of the judgment of the Circuit Court of Appeals by certiorari. The Oil Company contends that all of the traffic is intrastate traffic, and the Railroad Company, that all of the traffic is interstate traffic.

STATEMENT OF THE CASE.

The Oil Company is a Kentucky corporation doing business in some of the southern States, including Florida. It is not a producing company. It buys its supplies of petroleum products upon the open market, largely from the Standard Oil Company of New Jersey at Tampico, Mexico, and from the Standard Oil Company of Louisiana at Baton Rouge, Louisiana. The Oil Company does a general retail, wholesale and jobbing oil business in the State of Florida. The products which it sells come into the Florida ports by vessels from points out of the State—the fuel oil from Tampico, Mexico, and the other products from Baton Rouge, Louisiana. In order for the Oil Company to carry on its business it is necessary for it to have storage facilities for the petroleum products so coming into the Florida ports and it is further necessary for it to maintain at all times supplies of petroleum products adequate for its business. Accordingly, it maintains in Florida at Port Tampa and Jacksonville, large batteries of storage tanks and a warehouse at each of said points.

The capacity of the storage tanks at the points named is 619,075 barrels. In these tanks the Oil Company stores petroleum products sufficient to meet the demands of its Florida business and supplies that business from the tanks. The Oil Company purchases its supplies delivered to it in the tanks at the ports and has nothing to do with the movement of the vessels carrying the oil. These vessels are owned or chartered by the companies selling the oil to the Oil Company. When a vessel arrives at port the Oil Company's agent is notified and the oil is thereupon pumped from the vessel into the storage tanks. The Oil Company then for the first time takes possession, settles for the petroleum products on the basis of the gallonage actually pumped into the tanks and then holds the products subject to the demands of its Florida business. The capacity of the storage tanks is some thirteen or fourteen times as large as the cargo capacity of any ship used by the selling companies carrying the petroleum products into the Florida ports.

The Railroad Company has nothing to do with the boat movement. There is no through rate nor any joint water and rail rate. The boats are private carriers. After the petroleum products come to rest in the storage tanks at the ports their future movement depends entirely upon the exigencies of the Oil Company's business. The stay of the petroleum products in the tanks is entirely indefinite. They may move from the tanks rapidly if business is brisk. They may remain in the tanks for a great length of time if the Oil Company's business is not active at that time. No

particular oil is destined for any particular point in the State of Florida and the only known destination of the petroleum products when they are loaded on the boat is the Florida port. The products may stay in the tanks for one week or they may stay there for two months or three months and sometimes longer. Furthermore, no particular cargo of oil is allocated to any particular tank or to any particular shipping point in the interior of Florida. All of these things depend upon the exigencies of the Oil Company's business. No one knows or can tell at the time a cargo of oil is pumped into the tanks at the ports where it will go, or to whom, or into what number of railroad shipments it may be broken up (R. 48, 49, 50, 51 and 113).

The Railroad Company has no notice as to when a cargo of oil comes into port and indeed has nothing to do with the petroleum products until the Oil Company makes a definite contract of carriage with it. The oil may stay in the tanks three months before it is shipped out by rail or it may stay there only one week, but in any event no contract of shipment of the oil from the tanks is made with the Railroad Company until after the oil has been in the tanks for a varying length of time. It is simply known in a general way that the oil will leave the tanks by rail sometime, but where or when it will go is not known at the time the cargo is unloaded.

Special mention must be made of lubricating oil and fuel oil, as these two petroleum products are handled somewhat differently from the kerosene and gasoline. Lubricating oil at Port Tampa is pumped di-

rectly from the steamers into tank cars and is thereupon hauled to the city of Tampa, about nine miles distant, on a regular switching or tariff rate, which rate is not involved in the controversy. There the lubricating oil is pumped from the tank cars into storage tanks, some of the oil being barreled and shipped out from the city of Tampa to other Florida points in the barrels. Some of it is used in the city of Tampa. Some leaves the city of Tampa in tank cars and some in smaller quantities. About six hundred barrels per month are barreled at Tampa. Of course the lubricating oil comes into Port Tampa in tank steamers (R. 60).

At Jacksonville the Oil Company's docks are located at what is called the St. Johns River Terminals and there, in addition to large storage tanks for fuel oil, gasoline and kerosene, the Oil Company also has storage tanks for lubricating oil. Accordingly, the lubricating oil is pumped from the steamer into the lubricating oil storage tanks. Thereafter it is pumped out of these storage tanks into tank cars and hauled to Kings Road Station in Jacksonville, which is about two and one-half miles distant from St. Johns Terminal. This movement is on a regular switching charge and the rate is not involved in this controversy. After the lubricating oil reaches Kings Road, it is put into tanks with other lubricating oil at that point and then distributed through the State of Florida. A large amount of lubricating oil is barreled at Jacksonville, about 3,500 barrels per month (R. 60, 61).

The facts in regard to fuel oil are somewhat different from all the other products handled by the Oil

Company. This difference lies in the fact that approximately 95 per cent of the fuel oil that comes into the State of Florida is sold on contracts theretofore made for its sale. In other words, the Oil Company makes contracts of sale for 95 per cent of the fuel oil that it brings into the State before the fuel oil comes into the State. Other than that, however, fuel oil is handled exactly as the other products. It comes in in large tank steamers. It is pumped at the port into large storage tanks. It may stay there for a short time or a long time, depending upon the demands of the Oil Company's business. It may go to one point or it may go to another. There is no allocation as to cargoes or parts of cargoes as to the particular points in Florida to which it will go, or as to the time it may move out of the tanks, or as to the person or company to whom it may go. There is no certainty as to its destination at the time of its arrival. It is fair to state, however, that nearly all of the fuel oil goes into a certain district in Florida, called the Bone Valley District. It is used in the fertilizer business, of course as fuel to get the rock out, which is crushed and of which a fertilizer is made. A small percentage of the fuel oil is held subject to current demands. The deliveries of fuel oil to Florida customers are very irregular. They are delivered on requirement contracts and the requirements depend upon the customers' business. It is necessary in handling the fuel oil to have large storage tanks and to have a large reserve supply of fuel oil on hand at all times (R. 121, 122, 123 and 124).

The Oil Company also maintains one warehouse each at Port Tampa and Jacksonville. In these warehouses it carries a varied assortment of products, such as lubricating oil in cans, candles, stoves and lubricating oil in barrels. Curiously enough, the Railroad Company applies the interstate rate to oil in barrels and applies the State rate to candles and stoves which may move in the same car to the same point from the same warehouse (R. 119).

It should also be stated that some thirteen per cent of all of the petroleum products coming into the city of Jacksonville are used in that city and somewhere between twenty and thirty per cent of the products coming into Jacksonville are shipped from that city to Southern points in Georgia and Alabama. Of course, these latter shipments properly take the interstate rate. In other words, petroleum products coming into Jacksonville may move in one of three different ways—some of them are used at Jacksonville, some go to southern points in Georgia and Alabama, and the balance to interior points in the State of Florida. There is no separation made in the tanks at Jacksonville between any of the products moving in the various ways mentioned. All of the oil in one tank may be used in Jacksonville, or it may go to inland points in Florida, or it may go to southern points in Georgia or Alabama, depending entirely upon the demands of the Oil Company's business at the time (R. 90).

None of the petroleum products coming into the port at Port Tampa are used at that point. The Oil Company maintains no delivery facilities or wagons

there, but of course some of these products are used in the city of Tampa, the record not disclosing the percentage (R. 90).

It was this slight difference in the Oil Company's method of doing business at Jacksonville and at Port Tampa that led the Circuit Court of Appeals to hold that the traffic from Jacksonville was State traffic and that the traffic from Port Tampa was interstate traffic. If the decision of the Circuit Court of Appeals were allowed to stand, the greatest confusion would result because for all practical purposes the business is handled the same way from both cities and the traffic is either all intrastate or interstate and the same rate should be applied to traffic from both points.

It should also be stated that the Oil Company pays local taxes to the State of Florida upon all of its petroleum products (R. 120).

The above constitutes a statement of the facts in the case. There is no dispute about them and a statement of the facts simply involves a statement of the Oil Company's method of doing business. The Oil Company has used the present method of conducting its business for years and, as already stated, prior to June 15, 1923, the Railroad Company applied the State rate to all of this traffic, but on the date named it made the change. In fact some of the railroads, namely, the Florida East Coast Railway Company, the Southern Railway Company and the Louisville & Nashville Railroad Company, still apply State rates to all of this traffic (R. 114).

Summarized, the Oil Company does in the State of Florida a strictly local business. Its products move into the State in interstate or foreign commerce and thereafter are held by it in storage tanks for indefinite periods of time. It keeps on hand at all times adequate supplies to meet the demands of its Florida customers. It is purely State commerce from the time the petroleum products come to rest in the tanks and the rates to be applied to the transportation necessary to serve that commerce should be the State rates.

ASSIGNMENT OF ERROR.

The Circuit Court of Appeals erred in holding that the traffic in gasoline, refined oil and fuel oil from Port Tampa to interior points in Florida was interstate commerce and governed by interstate rates, and in not holding that the fuel oil movement from Jacksonville was intrastate traffic.

POINTS AND AUTHORITIES.

First: The Oil Company's business in Florida is a local business carried on in intrastate commerce and intrastate rates should be applied to the transportation necessary to serve the business.

Atlantic Coast Line Railroad Co. v. Standard Oil Co. of New Jersey, 12 Fed. (2d Series) 541 (Certiorari denied by this Court);
Standard Oil Co. v. Atlantic Coast Line Railroad Co., 6 Fed. (2d Series) 911;
Seaboard Air Line Railway Co., Petitioner, v.

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Second: When products are unloaded, stored and mixed with other property in the State, interstate commerce is ended for all purposes.

General Oil Co. v. Crain, 209 U. S. 211;
Texas Co. v. Brown, 258 U. S. 466;
Sonneborn Bros. v. Cureton, 262 U. S. 506.

Third: The business of supplying on demand local consumers is a local business.

Public Utilities Commission v. Landon, 249 U. S. 236;
Missouri v. Kansas Gas Co., 265 U. S. 298;
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Fourth: The Florida ports are in good faith and for business purposes points of distribution for the Oil Company's products. The movement out, therefore, is a separate and distinct distributing movement and not a continuation of the original movement.

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Fifth: The traffic in fuel oil is also intrastate traffic.

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Sixth: Conclusion.

ARGUMENT.

The Oil Company's storage tanks at Port Tampa, Tampa and Jacksonville, and also its warehouses, are an essential part of its equipment for carrying on its Florida business. They are not simply means of transferring commodities from water to rail transportation. They are, as their names imply, storage tanks and warehouses in truth and in fact, and petroleum products are

stored in them indefinitely, awaiting the call of Florida business. They are in principle exactly like a warehouse or other storage depot of a jobber in any other line of business, such as the hardware business. Products move into them from outside of the State. The products are held there indefinitely and are shipped out only upon demands from local customers.

It is essential in the Oil Company's business for it to have an enormous storage capacity and the reasons for this are two-fold. First, it must be able at all times to satisfy its Florida customers, and, second, the oil market is a fluctuating one and the Oil Company must be in a position to accumulate large reserves of petroleum products when its officers are of the opinion that the oil market is going to advance, and according to the testimony in this case the storage capacity of the Oil Company is used frequently for that purpose.

It appears from the record that during the months of July, August and September of 1925, the price of gasoline was declining. During that period the Oil Company received at Port Tampa and Jacksonville approximately 210,000 barrels of gasoline. In those same three months it shipped out approximately 400,000 barrels, allowing its stocks to drop from 223,000 barrels on June 30, to 42,000 barrels on September 30. In other words, the opinion of the Oil Company's officers was that the stock should be depleted because these officers thought that the market was going lower. It only made small purchases during that period and of course tried to buy the gasoline as close to the bottom of the market as possible (R. 60).

On the other hand, during the months of April, May and June, 1925, the gasoline markets were advancing and the officers of the Oil Company were of the opinion that the markets were going higher. During that period therefore the Oil Company made large purchases and accumulated stocks in its tanks. It put into its tanks at Port Tampa and Jacksonville, 408,600 barrels of gasoline, but its shipments from those two points during that period approximated only 333,000 barrels. In other words, it was accumulating stock and taking advantage of the market conditions by the proper use of its storage facilities (R. 60).

In January, 1925, the Oil Company shipped from Port Tampa 58,406 barrels of gasoline; in December of the same year it shipped 88,862 barrels; in May of 1925, it shipped from Jacksonville, 64,805 barrels; in November of the same year it shipped 102,702 barrels, all of which shows that the movements into and out of these ports are irregular, depending entirely upon the varying conditions of the Oil Company's business in the State of Florida (R. 63, 64, 77 and 78).

It is submitted therefore that it cannot be truthfully said that the storage tanks at the Florida ports are part of the transportation facilities. If that were so, it would not be necessary to have the storage capacity of the tanks very much larger than the size of any one ship serving the traffic. As a matter of fact, however, the tanks are, as already stated, some thirteen or fourteen times as large in capacity as the cargo capacity of any ship serving the trade. The storage tanks, therefore, are much more than transportation facilities.

They are an essential part of the Oil Company's equipment to carry on a strictly local business in the State of Florida.

As this Court has said, the question of what is interstate or intrastate traffic is in the last analysis one of fact. It is having that principle in mind that we have made such a detailed statement of the conduct of the Oil Company's business.

In Southern Pacific Co. v. Arizona, 249 U. S. 472, at page 477, the Court said:

> "* * * Whether a shipment was at a given time in interstate commerce is a question of fact, * * *"

It is necessary to keep that principle in mind in reading the cases discussing this question, because unless it is kept in mind constantly the principles laid down in the various cases are somewhat confusing.

THE TRAFFIC IS STATE TRAFFIC.

The exact question involved in the case at bar was before the Circuit Court of Appeals for the Fourth Circuit in the case of Atlantic Coast Line Railroad Co. v. Standard Oil Co. of New Jersey, 12 Fed. (2d Series) 541, in which case this Court denied a petition for writ of certiorari. There the Standard Oil Company of New Jersey filed two suits, one against the Atlantic Coast Line Railroad Company and one against the Seaboard Air Line Railway Company, asking for an injunction enjoining those Companies from charging anything other than the State rates. The case pre-

sented exactly the same question as is involved in the case at bar. The traffic in that case moved from Wilmington, North Carolina, a port point, to interior points in the State of North Carolina. Of course the products came into the port at Wilmington in tank steamers exactly as in the case at bar, the only difference being that in that case the oil company brought petroleum products into Wilmington in its own tank steamers, directed that movement, and of course owned the petroleum products during the entire boat movement. In the case at bar the Oil Company has nothing to do with the boat movement and does not acquire title to or possession of the petroleum products until they are delivered to it in its storage tanks at the Florida ports. Of course the entire opinion in the North Carolina case is pertinent to the discussion of the case at bar and we do not undertake to quote from the opinion. It is sufficient to say that the opinion of the Circuit Court in the North Carolina case went fully into all of the authorities and held that the traffic involved was State traffic and should carry the State rates.

The Circuit Court of Appeals in the North Carolina case affirmed the District Court of North Carolina, which Court had theretofore considered the case and delivered a written opinion which is reported under the style of Standard Oil Co. v. Atlantic Coast Line Railroad Co., 6 Fed. (2d S.) 911.

The Supreme Court of Florida has also recently decided a case that involved the traffic under consideration in the case at bar and that case is now before this Court on certiorari under the style of Seaboard Air

Line Railway Co., Petitioner, v. State of Florida, *ex rel.,* etc., and Atlantic Coast Line Railroad Co., Petitioner, v. State of Florida, *ex rel.,* etc., No. 128 and 129. In that case the Supreme Court of Florida, speaking of the very traffic involved in the case at bar concluded its opinion with the following language:

> "In this view of the facts we are of the opinion that the petroleum and petroleum products stored in storage tanks and warehouses at Jacksonville and Tampa come to rest there; that the interstate movement ceases and that subsequent shipments of it to points within the state are intrastate movements and subject to the rates prescribed by the relators."

We have mentioned the North Carolina case and the Florida case first in our brief for the reason that both of these cases deal with the oil business and with the exact question presented in the case at bar. There are other cases, however, from this Court which lay down principles which, we submit, control the decision of the case at bar, that where petroleum products come to a state of rest in storage tanks the interstate journey is over.

WHEN PRODUCTS ARE UNLOADED, STORED AND MIXED WITH OTHER PROPERTY IN THE STATE, INTERSTATE COMMERCE IS ENDED.

The case of General Oil Co. v. Crain, 209 U. S. 211, has long been a leading case. That is the case in which the oil company sought to escape taxation upon the ground that its products were moving in interstate commerce. The oil company brought a suit to enjoin

the State officers of Tennessee from enforcing an inspection tax on oil and gasoline. The Company maintained a large place of business at Memphis, consisting of storage tanks and other equipment. Its wells, refining and manufacturing plants were located in Pennsylvania and Ohio. It transported its products by rail from those States to Memphis. The Company had separate tanks in Memphis labeled as follows: "Oil already sold in Arkansas, Louisiana and Mississippi" and others labeled "Oil to be sold in Arkansas, Louisiana and Mississippi." The Company took the position that the oil in tanks so labeled was not subject to local laws, upon the ground that it was moving in interstate commerce, that the delay in Memphis was merely for the purpose of separation, distribution and reshipment, and was no longer than was required by the nature of the business and the exigencies of the business, that the interstate transit of the oil was not finally ended at Memphis but was only temporarily interrupted there.

The Court, however, said on page 230 of its opinion, that the property was receiving the protection of the State, that it had reached the destination of its first shipment, and was held there, not in necessary delay or accommodation to the means of transportation, but for the business purposes and profit of the Company. The Court, accordingly held that the interstate commerce had ended and that the property was subject to the State Tax Laws of Tennessee.

One of the points made in the Crain case was that that part of the oil being held there to fill orders al-

ready received, just as fuel oil is held in the case at bar, was still moving in interstate commerce, but the Court dismissed this contention of the oil company by stating that in order to fill those orders it was necessary that the property be given a locality in the State of Tennessee beyond a mere halting in its transportation. In other words, it required storage there, maintenance of the means of storage, putting it in and taking it from storage, and that that in reality was a necessary branch of the oil business.

The only way that the Crain case can be distinguished from the case at bar is to say that the Crain case involved a question of taxation, while the case at bar involves a question of transportation, but we believe that this is a distinction without a difference. The question to be decided in both cases was whether the petroleum products come to such a state of rest that the interstate journey is ended and the Court in the Crain case answered the question affirmatively. Indeed, if the Court had not answered the question in that way, then practically all oil business would be an interstate business in States where no oil is produced, because in every such case the petroleum products would have to come into the State from outside, and if the movement from outside should so color subsequent movements within the boundaries of a particular State, then practically all the oil business in States where there is no production has to be carried on in interstate commerce. We submit that such a principle applied to the oil business would not be sound.

This Court has also recognized the principle in the case of Texas Co. v. Brown, 258 U. S. 466. That was a suit for an injunction to restrain the officials of the State of Georgia from enforcing an inspection law of that State. The conditions under which the Texas Company did business in Georgia are stated on page 472 of the Court's opinion and the conditions there stated are similar to the case at bar, except that the oil came into Georgia by tank car instead of by tank steamer. Indeed the oil business all over the country is conducted in more or less the same way. One of the important points made in the case was that the Inspection Law was an interference with interstate commerce in that it inspected products brought in from other States. It was necessary for the Court to decide when the interstate commerce ended in the oil business, and the Court said on page 473:

> "* * * that so far as plaintiff's products were indefinitely stored within the State, or sold there after breaking bulk or original packages, they were subject not only to inspection but to the tax imposed, as soon as the interstate transportation was ended; and that the State should be permitted to enforce the inspection fees so soon as the products passed out of interstate commerce, although restrained with respect to products while in such commerce; citing *Ratterman* v. *Western Union Telegraph Co.*, 127 U. S. 411."

Here is a plain statement that, when the oil or gasoline is indefinitely stored within the State, interstate commerce has ceased.

Again, the Court said, on page 477:

> "Ordinarily, unless a loaded car be used for indefinite storage, or as a distributing tank for local sales (nothing of either kind appears in the case), *it remains in interstate commerce until unloaded,* and the agents of the State may not lawfully subject its contents to the inspection charges *until transferred to the storage tank,* unless with plaintiff's consent * * *" (Italics ours).

Here the Court plainly states that, after the products are pumped into storage tanks, interstate commerce is over.

The case of Sonneborn Bros. v. Cureton, 262 U. S. 506, laid down the same principle. That was a case involving a tax upon receipts for the sale of oil shipped into the State of Texas from outside of the State and afterwards sold from the storerooms in unbroken packages. The Court held that the traffic was intrastate traffic and the receipts subject to the tax.

The three cases just cited involved the oil industry and we submit that the Court has laid down principles decisive of the case at bar holding that the interstate traffic in the petroleum industry ends when the petroleum products are brought to a state of rest in large storage tanks thereafter to be distributed in local commerce.

THE BUSINESS OF SUPPLYING ON DEMAND LOCAL CONSUMERS IS A LOCAL BUSINESS.

As has already been stated, the Oil Company's business in Florida is a local business. In addition to the large storage tanks at the ports, the Oil Company has 123 bulk marketing stations at inland points, 165 drive-

in service stations, approximately 410 delivery vehicles, approximately 5,000 dealer customers and several hundred thousand retail customers (R 61).

It sells its products in the usual way. No contract is made in advance of the arrival of the product at the port except in the case of fuel oil. All of the other products come into the port and await the orders and pleasure of the Oil Company's customers. In such a case, even though the petroleum products have come into the State of Florida in interstate or foreign commerce, the subsequent commerce is state commerce.

This rule was laid down in the case of Public Utilities Commission v. Landon, 249 U. S. 236. The important facts in that case were that the Receivers of the Kansas Natural Gas Company sued to prevent the various defendants, including the State Utilities Commissions of Kansas and Missouri from interfering with the establishment and maintenance of rates for gas consumers sufficiently high to compensate the Receivers. The Gas Company owned a system of pipe lines extending from Oklahoma and Kansas points to certain towns and cities in Kansas and Missouri. The Gas Company produced, purchased, transported and distributed gas under agreements to local companies. The local companies in turn sold the gas to their customers. The Missouri Public Service Commission suspended the proposed advance in rates to consumers and the Receivers began a proceeding against the Missouri Commission and others for an injunction restraining the Commissions and others from interfering with the establishment of reasonable compensatory rates. The

Court below held that the commerce was interstate commerce of a national character and that the action of the Public Service Commissions interfered with and burdened interstate commerce. This Court in considering the case said:

> "But we cannot agree with its conclusions that local companies in distributing and selling gas to their customers acted as mere agents, immediate representatives or instrumentalities of the receivers and as such carried on without interruption interstate commerce set in motion by them.
>
> "That the transportation of gas through pipe lines from one State to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State. American Express Co. v. Iowa, 196 U. S. 133, 143; Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229; Haskell v. Kansas Natural Gas Co., 224 U. S. 217.
>
> "But in no proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner-tips by the local companies operating under special franchises constituted any part of interstate commerce. *The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business.* Payment to the receivers of sums amounting to two-thirds of the product of these sales did not make them integral parts of their interstate business. In fact, they lacked authority to engage by agent or otherwise in the retail transactions carried on by the local companies. Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods.

> Rearick v. Pennsylvania, 203 U. S. 507, 512; The Pipe Line Cases, 234 U. S. 548, 560. The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own account and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains. The Court below erroneously adopted the contrary view and upon it rested the conclusion that the Public Commissions were interfering with establishment of compensatory rates by the receivers in violation of their rights under the Fourteenth Amendment." (Italics ours.)

Accordingly the case was reversed. The language of the Court is pertinent to the case at bar. The Oil Company receives supplies which have moved in interstate or foreign commerce, but it receives those supplies, stores them and then disposes of them in a purely local business, and the transportation movement necessary to the local distribution of its supplies is an intrastate movement. In its essential facts the Landon case is almost identical with the case at bar and this Court took the broad view in the Landon case that the interstate commerce movement ended when the gas was delivered to the distributing companies and that thereafter intrastate commerce began. In other words, we submit that it looked at the situation as it is and treated local commerce as local commerce.

The Landon case answers two arguments that have been used by the Railroad in the case at bar. The Railroad Company draws a picture of the great flow of oil from Baton Rouge and Tampico, through

the tank steamers, into the large storage tanks, then into tank cars, then into the smaller storage tanks, and then into the gasoline tanks of the automobiles. The picture is one of a continuous flow of oil from Tampico and Baton Rouge to the gasoline tanks in the automobiles in the State of Florida. The same picture could have been drawn in the Landon case, gas flowing from the wells, through the pipe lines in Kansas and Oklahoma, through the tanks of distributing companies in Missouri, to the gas burner tips of the consumers, but the fact is commerce in any article which is imported into the various states can be pictured in exactly the same way and if this argument establishes that all such business is interstate commerce, then practically all of the business of the country is interstate commerce and there could be very little local business. Of course, in the case at bar the stop at the ports is much more pronounced than appears in the Landon case.

The second argument referred to is that made by the Railroad Company that the Oil Company knows that its petroleum products are not going to stop at the ports, but are going to interior points and that this makes the movement continuous, but the same argument could have been advanced in the Landon case about the gas. But evidently the Court did not consider it of importance.

The fact remains that in the case at bar the business is essentially local just as much so as the hardware business or any other business in which large storage facilities are required to gather goods and products

from other states and hold them in the one state subject to local demands.

Another gas case was that of Missouri v. Kansas Gas Co., 265 U. S. 298. In that case the question was directly presented as to the character of the commerce carried on between the Gas Company and distributing companies in Missouri and Kansas, and the Court held that the sale from the Gas Company to the distributing companies was interstate business and not subject to state regulations. The Court, however made it perfectly plain that under the Landon case this rule would not apply in the sale of gas by the distributing companies to the consumers. The Court said, on page 308:

> "* * * *With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to State regulation.* Public Utilities Comm. v. Landon, *supra,* p. 245. In such case the effect on interstate commerce, if there be any, is indirect and incidental. But the sale and delivery here is an inseparable part of a transaction in interstate commerce—not local, but essentially national in character—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. * * *" (Italics ours.)

And again, on page 309:

> "In both cases the things done were local and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is

clearly recognized in the Landon case. *The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State* and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation. * * *" (Italics ours.)

Here it seems to us that the Court has stated the rule very clearly that the business of supplying on demand local consumers is a local business and the fact that the Oil Company's products come into the State of Florida in interstate commerce should not be allowed to color the entire transaction and make interstate business out of what is a purely local affair.

Another gas case was that of People's Natural Gas Co. v. Public Service Commission, 270 U. S. 550. In that case the validity of an order of the Public Service Commission of Pennsylvania requiring the People's Gas Company to continue its prior practice of supplying natural gas to another company at Johnstown for sale to consumers in that city was involved. It appears

that the People's Company purchases two-thirds of its gas from a producing company in West Virginia, having pipe lines leading from wells in that state to the boundary between West Virginia and Pennsylvania, and that the People's Gas Company produced the other one-third from its own wells in the Southwestern counties of Pennsylvania. What this Court held was that as there was enough Pennsylvania gas flowing into the mixture to meet the requirements of the Public Service Commission, interstate commerce was not involved and the order was upheld. This Court said in concluding its opinion as to whether the order, if it did apply to interstate commerce, could have been sustained became immaterial in view of the conclusion the Court had reached. There is some language in the opinion, however, which seems to indicate that the Court considered the gas from West Virginia passing through the pipe lines without a stoppage of any kind at the state boundary and a prompt delivery to purchasers, as a movement in interstate commerce. But the Court at two points in its opinion indicated that the reason for this expression of opinion was that the transportation was not interrupted at the state border line and that the gas passed over the boundary without its movement being arrested.

Of course in the case at bar the transportation is interrupted for a varying length of time at the Florida ports and this fact we submit distinguishes the case at bar from the People's Gas case.

The most recent case we have found is that of Public Utilities Commission of Rhode Island v. Attleboro

Steam & Electric Co., 273 U. S. 83. The subject of commerce dealt with was electric current and the Court held that under the facts of the case the commerce was interstate commerce. The Court, however, recognized the principles for which we contend in the language that it used in its opinion. It said, on pages 88 and 89:

> "* * * that in the *Pennsylvania Gas Co.* case, the decision rested on the ground that the service to the consumers for which the regulated charge was made, was 'essentially local,' and the things done were after the business in its essentially national aspect had come to an end—the supplying of local consumers being 'a local business,' even though the gas be brought from another State, in which the local interest is paramount and the interference with interstate commerce, if any, indirect and of minor importance; * * *"

So in the case at bar. The national aspect of the Oil Company's business has come to an end when it purchases its supplies from the selling companies and the selling companies deliver these supplies into the Oil Company's tanks in the Florida ports. Thereafter the dealings in these supplies are of concern only to itself and its customers in Florida.

THE FLORIDA PORTS ARE IN GOOD FAITH AND FOR BUSINESS PURPOSES POINTS OF DISTRIBUTION FOR THE OIL COMPANY'S PRODUCTS.

The Florida ports are nothing more nor less than points of distribution. There the products come to an indefinite state of rest and bulk is broken. The movement out therefore is a separate and distinct distributing movement and not a continuation of the original

movement. This rule is laid down in all of the cases involving transportation questions.

Gulf, Colorado & Santa Fe Railway Co. v. Texas, 204 U. S. 403. In that case there was involved the question of a penalty which was to be imposed upon the Railway Company for exacting an interstate instead of an intrastate charge on grain shipped from Texarkana, Texas, to Goldthwaite, Texas, upon a bill of lading which showed upon its face only a local transportation. The Railway Company took the position, however, that the local transportation was a continuation of the shipment from outside of the State, that the corn started from Hudson, South Dakota, and that its destination was Goldthwaite, Texas. The Court said, however, on page 409:

> "When the commodity transported has reached the termination of its journey and has been delivered to the consignee, it ceases to be a subject of interstate commerce, and the subsequent shipment from the point at which it has been delivered to another point in the State, is an intrastate shipment."

We take it that what the Court meant in the Texarkana case was that in the absence of bad faith on the part of the shipper in an effort to take advantage of the rate, the actual facts in regard to the movement control. If the corn were stopped in good faith at one point in the state and then in good faith shipped to another point, the latter movement is local.

This seems to us to be the difference between the Texarkana case and the case of Baltimore & Ohio Rail-

road Co. v. Settle, 266 U. S. 166. That case was a transportation case but it involved the question of good faith on the part of the shipper, it appearing that the stoppage was not for the business purposes of the shipper but that the sole and only purpose was to obtain a cheaper rate. We quote from page 167 of the Court's opinion:

> "The Baltimore & Ohio Southwestern Railroad has freight stations at Oakley and at Madisonville, both within the city limits of Cincinnati. It duly published, in connection with other carriers, interstate carload rates on lumber from southern points to Oakley and to Madisonville. It also duly published intrastate carload rates from Oakley to Madisonville. The interstate rates to Madisonville were higher than the interstate rates to Oakley plus the local rate from Oakley to Madisonville. W. H. Settle & Co., who are lumber dealers, with a place of business at Madisonville, had lumber shipped from the South to Oakley; paid the freight to that point; received at that station delivery of the loaded cars on the team tracks or in the bulk yard; and, without unloading any of the cars, reshipped them within a few days to Madisonville on local bills of lading, paying the local freight rate. *Thus, the shippers secured transportation of the lumber to Madisonville by paying less in freight charges than would have been payable according to the interstate tariff, if the cars had been billed through to Madisonville.* At the time these cars were shipped from points of origin, and continuously thereafter, it had been the intention of the shippers that the cars should go to Madisonville. They were billed to Oakley and physical possession was taken by the shipper there, in order to get the benefit of the lower freight charges resulting from the combination of rates." (Italics ours.)

There was a deliberate attempt on the part of a shipper to take advantage of an anomalous situation and secure a lower freight rate than that provided for in the tariff, but the Supreme Court refused to permit it. But we submit that that case does not lay down any principle contrary to the principle for which the Oil Company contends in the case at bar. There is no question of the Oil Company arranging its business or shipments so as to take advantage of the lower rates. The Oil Company's business is conducted now as it has been conducted for years past and there is no intimation of bad faith in the case at bar, such as was directly involved in the Settle case.

The Davenport case is also an important case. It is reported as Chicago, Milwaukee & St. Paul Railway Co. v. State of Iowa, 233 U. S. 334. There the Railroad Commission had ordered the Railroad Company to accept shipments of coal in foreign cars at Davenport, Iowa, and move them to other points in Iowa. The Railroad Company claimed that the Commission had no authority to make such an order, because the movement was a movement from outside the State and constituted interstate commerce. The Railroad Commission found that the city of Davenport, under the facts in the case, had become a distributing point for coal shipped from outside the State, and that the movements from Davenport to other points in Iowa were intrastate. This Court adopted the same view and stated, on page 343:

"The record discloses no ground for assailing this finding. It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract. (Citing cases.) But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character. * * *"

Of course the facts in the case at bar are much stronger in supporting the view of intrastate commerce than they were in the Davenport case. The state of rest to which the coal came in the Davenport case is not comparable to the state of rest to which the petroleum products come in the case at bar. The division line between the inbound movement and the outbound movement is much more distinct in the case at bar. The fact is that in the case at bar the movement outward bound from the tanks has nothing to do with the inbound movements from the steamers and oftentimes they are as far as three months.

The case of Arkadelphia Co. v. St. Louis Southwestern Railway Co., 249 U. S. 134, is also a transportation case, which we submit sustains the Oil Company's contention in the case at bar. In that case the business involved is the lumber business. It appeared that the lumber left the woods and the bill of lading was issued from the woods to the mill. When the lumber reached the mill it was finished into barrel staves,

or headings, or hoops, stacked in the yard to dry, and stayed there over a course of several months. All of these things took place in the State of Arkansas. The Court then goes on to say, on page 150:

> "* * * The markets for the manufactured articles were almost altogether in other states than Arkansas, or in foreign countries, and about ninety-five per cent. of the sale of finished articles, that is, of the total outbound shipments, were made for delivery at points outside the State of Arkansas, the remaining five per cent. being sold and delivered, or shipped to points within the State of Arkansas. At the time the rough material was shipped to the mills, the mills did not know to whom they would sell the finished product, or to what points it would be shipped, but did know that there was little market for the finished articles in the State of Arkansas, and expected that they would sell ninety-five per cent. of said finished articles and ship them to points outside the State of Arkansas.
>
> "It was the intention of all the claimants herein, at the time they shipped the rough material into the milling points, to mill said rough material with the object of selling the said finished product and shipping it out as soon as practicable, and all of them knew and intended at the time they brought the rough material into the mill, on account of previous course of dealings in the business, that ninety-five per cent. of the finished product would be by them shipped to points outside the State of Arkansas.
>
> "The claimants paid the usual property tax to the State of Arkansas on their stock of materials on hand at the milling point, whether said stock was in the rough or finished, the amount of the tax being arrived at according to the methods in use in the State of Arkansas by the use of an average basis."

It is submitted that the facts stated bring the Arkadelphia case extremely close to the case at bar and the Court held of course in the Arkadelphia case that the movement from the forest to the mill was not an interstate movement but was separate and apart from the outward bound movement.

So in the case at bar. While the Oil Company knows that a large percentage of the petroleum products will move eventually from Port Tampa and Jacksonville to interior points in Florida, this knowledge does not alter the character of the movements from the ports, which are in their essential characteristics local movements. Of course attention has already been called to the fact that in Jacksonville thirteen per cent. of all products are used there and that some fifteen to twenty per cent. are shipped from Jacksonville to points in Georgia, so that the movement after the products reach Jacksonville is uncertain in the last degree. At Port Tampa there is no market for petroleum products and none are used there. At Tampa, however, which is nine miles from Port Tampa, a certain percentage of the products are used, but the record does not disclose what percentage.

The Railroad Company in the case at bar relies largely on the case of Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111. In that case it appeared that an export firm by the name of W. A. Powell Company bought for export from Sabine Tram Company 500,000 feet of heavy pine lumber to be delivered at Sabine, Texas. From this point we state the

case in the language of the Court. The Court said at page 114:

> "At the date of the transactions in question the Sabine Tram Company was engaged in the manufacture of lumber at its mill at Ruliff, a station in Texas on the line of the Texarkana & Fort Smith Railway Company. W. A. Powell Company, Limited, was engaged in buying lumber for export to different points in Europe, through the ports of Sabine and Port Arthur, both in the State of Texas. On August 28, 1906, having made sales to customers for future delivery in Europe of large amounts of heavy pine lumber, for the carriage of which steamships had in part already been chartered, to fill such contracts, W. A. Powell Co. bought of the Sabine Tram Company 500,000 feet of heavy pine lumber of certain dimensions, to be delivered during the months of September and October. The contract provided for delivery either in the water at Orange, Texas, or f. o. b. cars at Sabine, Texas, at the option of the seller. The seller exercised the option to deliver at Sabine, a station on the line of the Texas & New Orleans Railway. * * *"

Again, the Court said, on page 115:

> "* * * Upon arrival at the station of Sabine it was, by direction of the agent of Powell Company carried without delay about a quarter of a mile beyond the station to the dock, where the lumber was to be unloaded. The lumber was unloaded from the cars into water of the slip in reach of ship's tackle, ready for loading onto ships. The Sabine Tram Company had no connection with this further carriage or switching of the lumber to the docks after its arrival at the station of Sabine, but this was done solely at the instance and under the direction of the agent of Powell

Company. The transportation from Ruliff to Sabine was entirely within the State of Texas."

The Court said again, on page 116:

"W. A. Powell Company, Limited, regarded the shipments in controversy as export shipments, and demanded, expected, and received, the use of terminal facilities, additional free time and other privileges accorded to shippers of export freight under export tariffs."

The Court said again, on page 117:

"All the lumber in question was in fact unloaded from the cars by W. A. Powell Company, Limited, into the Texas & New Orleans Railroad Company's slips, or upon its docks, in reach of ships' tackle and loaded into the ships previously chartered for the purpose by W. A. Powell Company, Limited, which steamships carried same thence direct to Europe, where this lumber was applied upon contracts for sale in Europe made before the lumber began to leave Ruliff, and made in fact before the lumber was purchased from the Sabine Tram Company, and before it was sawed, and before the logs from which it was sawed left the State of Louisiana for the Sabine Tram Company's mill at Ruliff, in the State of Texas. One of the ships actually waited at the docks at Sabine for the arrival of part of this lumber which constituted a portion of its cargo.

"The ship which carried the last of this lumber from Sabine to Europe was chartered by W. A. Powell Company, Limited, for this purpose after these lumber shipments began to arrive at Sabine, but before all of the shipments had left Ruliff."

It is apparent from reading the above and other quotations which we might make from the statement of facts by the Court that the Sabine Tram Company

was not engaged in any local business in Sabine, had no facilities for a local business, and never intended to nor actually did any business of that character. The business was essentially a foreign one and was impressed with a foreign character from its inception.

In the case at bar, however, the ultimate commerce to be served is the local commerce, and as the Court said in the case of Public Utilities Commission v. Attleboro Co., *supra,* the business is "essentially local" and the things done were after the business in its essentially national aspect had come to an end—the supplying of local consumers being "a local business."

The Sabine Tram case was a case in which the business transacted was essentially foreign and all of the things done in regard to it were essentially foreign.

The Railroad Company also relies on a line of cases involving the prosecutions under the various Anti-Trust Acts, but it is submitted that in such class of cases the Court will frequently extend its rule further towards interstate commerce than it will in an ordinary transportation or taxation case.

We believe the language of the opinion in the case of Pennsylvania Railroad Co. v. Knight, 192 U. S. 21, justifies such a statement. In that case the Court held that the Pennsylvania Company's cab system operated from its station in New York was not such a component part of its system as to constitute the traffic in its cabs interstate commerce, yet the Court said if the Pennsylvania Railroad Company should have used the agency of its cab system as a part of a conspiracy to

unduly and constantly monopolize interstate passenger traffic, it could and would have been brought within federal restraint.

The Circuit Court of Appeals for the Fourth Circuit in the case of Atlantic Coast Line Railroad Co. v. Standard Oil Co. of New Jersey, *supra,* took the same view of the cases involving the Anti-Trust Acts.

We submit therefore that the cases of Stafford v. Wallace, 258 U. S. 495; Binderup v. Pathe Exchange, 263 U. S. 291, and Lemke, Attorney General, v. Farmers Grain Co., 258 U. S. 50, are not important in the discussion of the question involved in the case at bar. The Binderup case was a conspiracy case and in order to break up the combination the Supreme Court held that the facts presented constituted interstate commerce. In the Stafford case the facts involved a conspiracy by the Meat Trust. The Court held that the facts constituted interstate commerce. Also the Lemke case, involving the Grain Futures Act, was disposed of in the same way.

Under authority of the transportation cases which we have cited under this heading, we submit that the storage tanks and warehouses at the Florida ports are essential equipment for the carrying on of the Oil Company's business in Florida. The initial movement ends when the products reach these tanks and warehouses. Thereafter the movement is a distributing movement, separate and distinct from the original movement.

We believe that an illustration taken from another business would be helpful. We have in Louisville a

large hardware company known as the Belknap Hardware & Manufacturing Company. This company maintains a number of very large warehouses in the city of Louisville. It purchases large quantities of hardware from Pittsburg and other eastern cities. A large proportion of these products come down the Ohio River to Louisville on barges. The products are then unloaded and placed in the hardware company's warehouses. The hardware company holds these products then subject to the demands of its local business in Kentucky and in the other southern States. Of course the hardware company realizes fully that the hardware will not stop permanently in the warehouses in Louisville. It realizes that part of its hardware will move to other and smaller cities in the State of Kentucky. We do not believe, however, that this intention or this knowledge on the part of the Belknap Company would characterize the movement out of its warehouses to the smaller cities in Kentucky as part of the original movement into the warehouse and make of it an interstate movement. The movement from the warehouse in Louisville to the small town in Kentucky is a separate and distinct movement from the inbound movement and is a State movement.

Furthermore, the fact that a steady and constant stream of hardware is constantly coming down the Ohio River by barge and passing through the warehouses of the Belknap Company at Louisville to the smaller towns in Kentucky does not impress the movement from Louisville to the smaller towns as a continuation of the

original movement into the warehouse. Louisville is a distributing point for the hardware. The Florida ports are distributing points for the Oil Company's petroleum products. The movement in to the distributing points is one movement; the stay there is indefinite, and the movement out is another and separate movement.

It is submitted that the case at bar cannot be distinguished from the illustration which we have drawn. It is further submitted that the movement of the hardware from the warehouse in Louisville to the smaller towns in Kentucky and the movement from the Florida ports of the petroleum products to interior points in Florida are both State movements.

The illustration does not apply exactly to the Oil Company's method of conducting its fuel oil business because fuel oil moves into Florida on contracts of sale previously made and it has always been conceded by the Oil Company that its case with respect to fuel oil is not as strong as the other branches of its case.

THE TRAFFIC IN FUEL OIL IS ALSO STATE TRAFFIC.

As has already been stated several times, the fuel oil business is handled somewhat differently from the other products. Ninety-five per cent of the fuel oil comes into the State of Florida on contracts previously made for its sale. A sample copy of these contracts was put into the record (R. 121), and showed that the purchaser contracted for 50,000 barrels of fuel oil, deliverable over a year's time, at the rate of about 4,000 bar-

rels per month. The testimony in regard to these contracts was that the customers were not held to regular deliveries, but that the contracts as performed were in reality requirement contracts. As long as the customer acted in good faith he was allowed to take more or less than the amount stated in the contract, that the deliveries were not made in regular quantities but were irregular and dependent upon the business of the customer (R. 123). Furthermore it appears that a small proportion (approximately five per cent) of the fuel oil is held subject to current demands and that there is no separation between the two classes of fuel oil. It all comes in on the same steamer, goes into the same tank and comes out of the same tank. When a cargo is received no one can tell where it is going or when it is going (R. 123). While the Oil Company admits that its case in regard to fuel oil is different and somewhat weaker than the situation in regard to its other products, yet it is submitted that the fuel oil also moves in intrastate commerce in the State of Florida after it is delivered in the storage tanks. No one can tell when fuel oil is pumped into the tanks how long it will stay there, or where it will go, or to what customer, or in what quantity, and the movement out of the port by rail is separate and distinct from the movement into the port by boat. The Oil Company's case with regard to fuel oil is weaker only because ninety-five per cent of the fuel oil is sold before it comes to rest in the tanks and is not held subject to calls of local business as the other products are.

The Interstate Commerce Commission had before it a case with regard to fuel oil which we submit is practically the same as the case at bar, and it decided that the movement from the ports to interior points in the State was a state movement. Washington Dehydrated Food Co. v. Great Northern Railway Co., 102 I. C. C. 363. There the Food Company had two places of business in the State of Washington. It made a complaint to the Interstate Commerce Commission about rates from a port point in the State of Washington to interior points in the same State. The Commission refused to take jurisdiction, however, upon the ground that the movements were intrastate movements. It appeared that the oil was shipped without any previous rail haul from California ports to Richmond Beach in tank steamers owned and operated by the Oil Company exclusively for the transportation of its own commodities. No tariffs were filed by the Oil Company for such service and the tank steamers did not operate on any regular schedule. When the vessel arrived at Richmond Beach the oil was discharged through the pipe line into the storage tanks and thereafter rail transportation took place from Richmond Beach to interior points. The traffic involved is exactly like the traffic in the case at bar and, as already stated, the Interstate Commerce Commission took the view that the movement from the port to interior points was intrastate commerce.

The Railroad Company relies upon two other cases decided by the Interstate Commerce Commission. One

of them was International Agricultural Corporation v. Director General, as Agent of the Seaboard Air Line, 60 I. C. C. 726, which was a case dealing with fuel oil, but in that case the question of jurisdiction was not raised, the jurisdictional question being conceded by all parties to the proceeding.

The second case relied upon by the Railroad Company was that of Alexander Grocery Co. v. Beaumont, Sour Lake & Western Railway Co., 104 I. C. C. 155. That case involved the coffee business. There is not a full statement in the opinion of how the coffee business is conducted, but the Commission simply concludes that the temporary storage of coffee at the ports did not divest the traffic in that commodity of its foreign character or deprive the Commission of its jurisdiction.

The Railroad Company also refers to the case of Tampa Fuel Co. v. Atlantic Coast Line, 43 I. C. C. 231, but it is submitted that that case is an excellent example of a through movement. The complainant in that case was a coal dealer in Baltimore and sold coal to the phosphate rock producers in the Bone Valley District of Florida. It had no place of business in Florida and so far as the record shows did no local business. The coal shipments originated at Baltimore and other North Atlantic ports and moved in ocean vessels directly to Port Tampa. Before the arrival of the vessel the Atlantic Coast Line's agents were notified of the expected arrival and what part of the cargo was to go to Tampa and what portion to the Bone Valley District. The coal was unloaded directly onto the cars

from the boats without any stoppage of the movement, and went on to its ultimate destination. The Atlantic Coast Line agent did the unloading from the vessel to the railroad cars and billed the coal either to Tampa or Bone Valley, according to instructions given by the shipper before the vessel ever reached Port Tampa. The Commission held that the movement out by rail was simply a continuation of the boat movement. A definite arrangement for a continuous movement was made in advance and there was no actual or constructive stoppage of the traffic at the port. In fact the whole arrangement was designed to avoid unnecessary stoppage. Under those circumstances there is no doubt that the movement from Port Tampa to the Bone Valley District was part of a definite through movement from Baltimore to the Bone Valley District, and the Commission so held.

One of the Railroad Company's witnesses testified that frequently oil was coming out of the tanks at the same time it was being pumped into them by the ship (R. 128). Upon cross-examination, however, it developed that in some months the Oil Company has only two steamers coming in and in some months four and occasionally as many as five in one month, that some of the steamers take one day to unload and others possibly two days (R. 129, 130). In a month therefore in which the Oil Company only received two steamers and it so happened that these steamers only took a day each to unload, there would only be two days on which steamers were being unloaded at the same time tank

cars were being filled, assuming that tank cars were filled every day. We do not believe this point is important. We only mention it because some point is made of it in the Railroad Company's brief. The important fact is that the storage tanks are of far greater capacity than any steamer serving the trade and that large reserve supplies of petroleum products are stored in the tanks for indefinite periods of time.

CONCLUSION.

The Oil Company submits the following summarization of its case:

FIRST: The Oil Company does a strictly local business in Florida. It must have products and facilities to serve that business. Its products are petroleum products, none of which are produced in Florida. Its facilities are storage tanks and warehouses at the ports, and bulk stations, drive-in service stations, tank wagons and trucks at the interior points.

SECOND: The petroleum products are purchased from companies outside of the state—the fuel oil from Tampico, Mexico, and the other products from Baton Rouge, Louisiana. They move into the Florida ports in tank steamers, private carriers, under the direction and control of the selling companies. The Oil Company itself has nothing to do with this movement.

THIRD: After the vessels are docked in the Florida ports the products are pumped into the Oil Company's storage tanks. There the title passes and the Oil Company takes possession. Up to this point the

products have never been in the hands of a carrier and the Railroad Company has had nothing to do with the products or the movement.

FOURTH: Bulk is broken and the products then remain in the tanks for varying and indefinite lengths of time. They become mixed with the general mass of Florida property and are subjected to state taxation there. The stay in the tanks varies from a short time to a long time, depending upon the Oil Company's local business in Florida. Thereafter, it may be within one week or it may be within three months, the contract of carriage is made with the Railroad Company. Then for the first time does the Railroad Company appear in the transaction. It hauls all the products from *Port Tampa* to interior points in Florida. It hauls twenty or thirty per cent. of the products, excluding fuel oil from *Jacksonville* to points in Southern Georgia and Alabama on an interstate rate. It hauls approximately sixty-two per cent. to interior points in Florida to serve the local business, and the balance, approximately thirteen per cent., is consumed in Jacksonville.

FIFTH: No separation as between the products moving in the various ways is made in the tanks. At the time the products come into the tanks no one knows in how many shipments they will leave, or to what points they will go, or to whom, or in what quantities. One cargo of oil may remain in the tanks for three months, or it may be broken up and part of it may leave in one week and the rest of the cargo in three

months, or it may move away in a solid trainload of tank cars, or it may be broken up into a hundred or five hundred different shipments to various interior points. To say that under these circumstances the intrastate movement out of the tanks is a continuation of the inward bound movement in the vessels violates the facts.

The Oil Company submits the following principles deducted from the facts:

FIRST: The Oil Company's business in Florida is a local business and the traffic rates to be applied to such a business are the intrastate rates and not the interstate rates.

SECOND: The indefinite stoppage in the tanks is for the *bona fide* business purposes of the Oil Company and not incident to the transportation, and the further movement within the State is state commerce.

THIRD: The traffic, although from outside the State, having come to a state of rest in the State of Florida in such a manner as to form part of the stock in trade of the Oil Company there, the further movement within the State is state commerce and not interstate commerce.

FOURTH: The movement to the storage tanks at the ports is a gathering movement made to serve a local business but the final movement does not start until the contract of carriage is made with the Railroad Company and shipments delivered to that Company. The final movement within the State is an intrastate movement.

FIFTH: A general intention upon the part of the Oil Company of shipping all or part of its products from the ports to interior points in Florida does not make the final movement a part of the original movement, because the only known destination at the time of the original movement is the Florida port. The movement thereafter is uncertain up to the time a contract of shipment is made with the Railroad Company. The outbound intrastate movement from the tanks is definitely and clearly separated from the inbound movement into the tanks.

Finally, it is submitted that the Oil Company's business in Florida is a local business and that the transportation rates to serve that business should be the state rates.

It is submitted that in so far as the decree of the Circuit Court of Appeals applied the intrastate rates it should be affirmed, but that in so far as it applied the interstate rates to the traffic it should be reversed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 176

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,

vs.

STANDARD OIL COMPANY OF KENTUCKY.

No. 177

STANDARD OIL COMPANY, Incorporated in Kentucky, *Petitioner*,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY.

BRIEF OF COUNSEL FOR THE STATE OF FLORIDA AND ITS RAILROAD COMMISSION IN CASES No. 128 AND 129 AS AMICI CURIAE

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GEORGE C. BEDELL,

AS AMICI CURIAE.

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In the
Supreme Court of the United States

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*, vs. STANDARD OIL COMPANY OF KENTUCKY, *Respondent*.	No. 872. October Term, 1926.

STANDARD OIL COMPANY, a Corporation of Kentucky, *Petitioner*, vs. ATLANTIC COAST LINE RAILROAD COMPANY, *Respondent*.	No. 873. October Term, 1926.

BRIEF OF COUNSEL FOR THE RESPONDENTS IN CASES No. 128 AND No. 129, OCTOBER TERM, 1927, AS *AMICI CURIAE*.

This brief is filed in the interest of the State of Florida and its Railroad Commission, respondents in the cases of Seaboard Air Line Railway Company, Petitioner, vs. State of Florida *ex rel*, etc., and Atlantic Coast Line Railroad Company, Petitioner, vs. State of Florida *ex rel*, etc., Nos. 128 and 129.

Those cases arose upon petitions for writ of mandamus to enforce the rate prescribed by State

authority for the transportation of petroleum and petroleum products from Jacksonville, Tampa and Port Tampa to divers points within the State of Florida. Those rates are the same rates involved in the case at bar.

The mandamus cases were instituted by the Railroad Commission in the interest of the public generally, and the case made by the pleadings was not confined to the operation of any one oil company, but extended to the business of the entire industry at the ports mentioned and throughout the State. It was upon the case made in those pleadings that the judgment of the Supreme Court of Florida awarding a peremptory writ of mandamus was based.

Admittedly a very large portion of the commodities in question are brought to the ports in ships—some are brought by rail. In either event they are placed in storage tanks or warehouses and from these tanks and warehouses they are distributed by rail and tank wagons to the bulk marketing stations, retailers and consumers throughout the State, and in some instances to points beyond the State.

In the case at bar, a witness for the railroad company testified as follows:

> "The flow of oil through the tanks is practically continuous. They are loading tank cars through the receiving tanks continuously throughout every day in the year, except some Sundays. The Standard Oil Company does not do that on every Sunday; but it is practically continuous from the tanks. Frequently oil is

> coming out of the tanks at the same time that it is being pumped into them by the ship." (Rec. p. 128).

The witness speaks with some generality of statement. An accurate statement of the use of the tanks is contained in the elaborate compilations set forth in the record, pages 63 et seq. The testimony of the witness does not tell the whole story. It may be true that the cars are often drawing petroleum from the tanks at the very time that a ship is pumping petroleum into the tanks. It must be so unless all other work were suspended during the unloading of the ship. But the essential fact is that immense quantities of petroleum are from time to time accumulated in these tanks to serve the exigencies of the market.

Thus of fuel oil there was on hand in Port Tampa on December 31, 1924, 58,837 barrels, and on April 30, 1925, 105,084 barrels, and at the end of December, 1925, 33,872 barrels. Of gasoline there was on hand at Port Tampa on the 31st of December, 1924, 75,107 barrels; on September 30, 1925, but 11,277 barrels, and on the 31st of December, 32,735 barrels. Of fire proof oil there was on hand at Port Tampa on December 31, 1924, 16,709 barrels; on September 30, 1925, 260 barrels, and on December 31, 1925, 3,890 barrels. (Rec. pp. 63 to 67). Similar variations are shown for Jacksonville. (Rec. pp. 77 to 81).

> "We hold these products subject to the demands of our customers and business. The volume of business shifts with the seasons of the year and in the different departments." (Rec. p. 62).

In each of the cases the question to be determined is whether the rates governing this rail movement from the tanks and warehouses to the interior points within the State are controlled by the law of the State. Until June 15th, 1923, the State rates were generally recognized. They are still recognized by the Louisville & Nashville Railroad, the Southern Railway Company and the Florida East Coast Railway Company. (Rec. p. 114).

It appears from the record in this case that a very large part of the fuel oil is moved in tank cars to the larger consumers under annual contracts to supply given quantities, or requirement contracts. (Rec. pp. 120 to 123). The Court of Appeals found that 95% of the fuel oil distributed from Port Tampa is so sold, and held shipments of fuel oil from Port Tampa to interior points not subject to the State rate. (Rec. p. 134). It held as to the fuel oil distributed from Jacksonville that the record was not sufficient and remitted the case for further investigation. (Rec. p. 139).

A large part of the gasoline and kerosene is transported by rail from the tanks to the bulk marketing stations at divers points, 123 in number. A smaller part is distributed among the retailers by tank wagons. The Court of Appeals found that at Jacksonville 13% of the gasoline and kerosene received into the tanks is used locally at Jacksonville and never gets any further. It therefore decided that all gasoline and kerosene distributed from Jacksonville was subject to the State rate. (Rec. p. 139). It held, as to the gasoline and kerosene distributed

from Port Tampa, that the gasoline and kerosene was not subject to the State rate.

Lubricating oils are distributed from Jacksonville and Tampa by tank wagons, or in barrels or other small containers, and were held by the Court of Appeals to be subject to the State rate.

In the mandamus cases, the case was considered in its larger aspect and not with respect to particular percentages. In this view of the case, Ellis, J., says:

> "The cause and purpose of the delay at Jacksonville and Tampa of the petroleum and petroleum products of the oil companies is the determining factor by which it may be determined whether the reshipment of the products at those points from storage tanks and warehouses is or is not a continuation of the original interstate movement.
>
> "* * * From anything averred to the contrary, the oil companies retain the ownership of all the products arriving at the ports; that storage there is for their convenience and subsequent disposition of the commodity; that all, or any portion, of it may be resold in fact and diverted from the original destination of it; that it is held there for the profit of the companies by sales of a larger portion, or all of it, to customers with whom at the time of original shipment they have no contract.
>
> "It affirmatively appears from the allegations of the writs and the averment of the answers that actual transportation of the petroleum and petroleum products ceases at Tampa and Jacksonville; that the warehouses and storage tanks are the property of the oil

companies; that when placed in the storage tanks and warehouses of the oil companies it is withdrawn from the carriers which transported it to Florida; that subsequent movements are the result of new contracts of carriage with the respondents and the time of such subsequent movements is indefinite and dependent upon the convenience and pleasure of the oil companies; that an indeterminate quantity of the products (fol. 67), brought in any one shipment to Florida may be disposed of by the companies to persons other than those for whom the particular shipment was originally intended.

"In this view of the facts we are of the opinion that the petroleum and petroleum products stored in storage tanks and warehouses at Jacksonville and Tampa come to rest there; that the interstate movement ceases and that subsequent shipments of it to points within the State are intrastate movements and subject to the rates prescribed by the relators." (Rec. in cases Nos. 128 and 129, p. 61).

These same facts are shown by the testimony in the case at bar:

"* * * We do not use any particular tanks for products going to any particular section. All of our gasoline tanks are lumped, and all of our refined oil tanks are lumped, etc. When any particular cargo of either gasoline or refined oil is pumped into a tank, nobody knows where it is going." (Rec. p. 90).

In the course of its opinion in the case of Atlantic Coast Line Railroad Company and Seaboard Air Line Railway Company vs. Standard Oil Company

of New Jersey, 12 Fed. (2nd) 541-544, the Court of Appeals for the *Fourth Circuit* says:

> "* * * We regard it as relatively unimportant that a part of the oil and gasoline remained in Wilmington, that a large percentage thereof was shipped to substations of complainant instead of direct to purchasers, that the shipments from Wilmington to the substations were directed by the manager of the Charlotte Branch who had charge of the Wilmington storage plant, or that the shipments to tank car customers were in some instances made under continuing contracts. The determining factors in the case are that the cargo shipments from without the State ended at Wilmington; that the large quantities of oil and gasoline brought in by the tank steamers, came to rest and lost their identity there in complainant's storage tanks, and were mingled with its general stock; and that the shipments from Wilmington were made as a distribution from the general stock and not as a mere means of continuing the transportation begun with the tank steamers. These shipments were, therefore, independent movements. They cannot be distinguished in principle from shipments made by the owner of a chain of stores, who ships a carload of shoes from without the State to a central warehouse, and later ships them out by the box to his various stores as the needs of his trade require. In such case the governing factor is not the fact that the bulk of the car is broken, or that there is a new billing of the goods, or that the merchant may or may not have intended to reship them, but the fact that the shipments out constitute new movements, which are separate and distinct from the movement to the warehouse."

Cereals and their products move in a seasonly continuous flow from the farms to the consumers' tables. But it would be whimsical to consider the commodity a subject of Federal control as it passes through its course from the farm to the consumer's table; while it rests in the farmer's barn, in the grain dealer's elevator, the storage bins at the mill, the jobber's warehouse, the retailer's store or the baker's store room.

"Commerce with foreign nations and among the several States" includes not only traffic but also transportation by land and water, and every means and appliance directly employed in carrying it on. But the essential thing is traffic, and the other things are included because they are incidental. Where the transaction in hand is merely incidental to the traffic between the States it is subject to Federal control. Where it is in substance an incident of distribution within the State, it is not a concern of the Federal Congress.

This is pointed out in the opinion of the United States Circuit Court of Appeals for the *Fourth Circuit* in Atlantic Coast Line R. Co.—Seaboard Air Line Ry. Co. vs. Standard Oil Co. of New Jersey, 12 Fed. (2nd), 541, 547 and 548:

> "Here the journey of the cargo of oil as a cargo had ended. It had come to rest at a point of distribution, and its identity had been lost; and while, as said in the Settle case, further movements of a large part of the oil constituting the cargoes was contemplated, it was contemplated by way of distribution, and not as a con-

tinuation of the original movement, as in the cases relied on by defendants.

"In Champlain Co. vs. Brattleboro, *supra,* Chief Justice Taft distinguished a temporary interruption of an interstate journey from transportation to a central point preparatory to shipment in interstate commerce such as was dealt with in *Coe* vs. *Errol,* 116 U. S. 517; and, in the course of his opinion, he said:

> " 'If the interruptions are only to promote the safe and convenient transit, then the continuity of the interstate trip is not broken. * * * Interstate continuity of transit is to be determined by a consideration of the various factors of the situation. Chief among these are the intention of the owner, the control he retains to change destination, the agency by which the transit is effected, the actual continuity of the transportation, and the occasion or purpose of the interruption.' "

The distinction between transportation to the point of distribution and transportation beyond has been uniformly recognized in decisions of his Court.

> "The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if the applicable tariffs do not confer reconsignment or transit privileges." 260 U. S. 173.

Thus in Chicago, Milwaukee and St. Paul Railway Company vs. State of Iowa, 233 U. S. 334 and

342, in which was involved the validity of an order of the State Railroad Commission requirng the handlng of coal out of Davenport in the very cars in which it was brought from outside the State:

> "The Railroad Commission held that the transportation desired from Davenport was a purely intrastate service, saying: 'Under the admitted facts, the City of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee and he could sell it in transit or at Davenport or reconsign it to a point on respondent's railway, or any other railway, at his own discretion.' Upon the trial of the present suit in the State Court, the State introduced in evidence the proceedings, decision and order of the Commission, and without further evidence both parties rested. The Supreme Court of the State took the same view of the facts that the Commission had taken and accordingly held that the shipments were intrastate. The Court said that the facts showed that the coal was originally consigned to the coal company in Davenport, that it was there held until sales were made, that the consignee had taken delivery, paying the freight to the initial carrier and assuming full control." 233 U. S. 343.

This Court in its opinion said further:

> "It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character

of the commerce and not by mere billing or forms of contract. *Ohio Railroad Commission* vs. *Worthington*, 225 U. S. 101; *Texas & N. O. R. R. Co.* vs. *Sabine Tram Co.*, 227 U. S. 111; *Railroad Commission of Louisiana* vs. *Texas & Pacific Rwy. Co.*, 229 U. S. 336. But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character. *Gulf, Colorado & Santa Fe Rwy. Co.* vs. *Texas*, 204 U. S. 403; *Ohio Railroad Commission* vs. *Worthington*, 225 U. S. 101, 109; *Texas & N. O. R. R. Co.* vs. *Sabine Tram Co.*, 227 U. S. 111, 129, 130. The question is with respect to the nature of the actual movement in the particular case; and we are unable to say upon this record that the State Court has improperly characterized the traffic in question here." 233 U. S. 343, 344.

Thus in *Gulf, Colorado and Santa Fe Rwy. Co.* vs. *Texas*, 204 U. S. 403, a car load of corn was shipped from Hudson, South Dakota, to Texarkana, Texas. While in transit it was sold for delivery at Goldthwaite, Texas, and the corn having reached Texarkana was shipped out five or six days later under original seals and without breaking packages. The movement from Texarkana to Goldthwaite was held to be subject to the State rate.

In *Baltimore*, etc., *R. R. Co.* vs. *Settle*, 260 U. S. 173, this Court said:

"The decision in *Gulf, Colorado & Santa Fe*

> *Ry. Co.* vs. *Texas*, 204 U. S. 403, relied upon by defendants in error, is entirely consistent with these later decisions of this Court, although some expressions in the opinion are not."

Indeed, it was made the basis of the decision in the case of Bracht vs. San Antonio etc. Ry. Co., 254 U. S. 489.

In General Oil Co. vs. Crain, 209 U. S. 211, 213, the crucial facts appear in the following paragraph from the statement by the Court:

> "* * * For some years plaintiff has been engaged in business at Memphis, and has made that city not only a place of business at which to sell oil to the citizens and residents of Tennessee, but also has made it one of its distributing points to which its oils are shipped from Pennsylvana and Ohio in tank cars, from which cars the oils are unloaded into various tanks, barrels and other receptacles for the purpose of being forwarded to its customers in Arkansas, Louisiana and Mississippi, in which States it has many regular customers from whom it always has on hand many unfilled orders for oil to be delivered as soon as possible or convenient."

This oil was held to be subject to the inspection laws of the State of Tennessee.

The rules of the Interstate Commerce Commission are in accord with the decision of the Circuit Court of Appeals for the Fourth Circuit and the decision of the Supreme Court of Florida.

> Washington Dehydrated Feed Co. vs. Great Northern R. Company, decided Sept. 22, 1925, 102 I. C. C. 363.

Fuller & Co. vs. Southern Pacific Co., 128 I. C. C. 199.

In the case of the International Agricultural Corporation vs. The Director General, 60 I. C. C. 726, the defendants for reasons sufficient to themselves conceded the jurisdiction of the Interstate Commerce Commission.

The decision of the Circuit Court of Appeals for the *Sixth Circuit*, in the case at bar, overlooks a distinction pointed out in the opinion of the Circuit Court of Appeals for the *Fourth Circuit*, in Atlantic Coast Line R. Co.—Seaboard Air Line Ry. Co. vs. Standard Oil Co. of New Jersey (12 Fed. (2nd), 541, 547 and 548), namely:

In a certain class of cases the traffic in commodities was directly involved. In another class of cases the incidental transportation of the commodities was alone involved.

In the opinion of the Circuit Court of Appeals for the *Fourth Circuit* the Court said:

> "* * * That there is a difference in the principles applied to the two classes of cases, is apparent at a glance. In the one case it is the essential nature of the business which governs; in the other it is the essential nature of the particular transportation involved. If a group of merchants buying and selling goods in interstate commerce should conspire to raise prices, they would unquestionably be amenable to prosecution under the Sherman Act; but this would not authorize a transportation company to charge interstate rates on a shipment of goods which one of the merchants might make to an-

other within the same State. As said by Judge Sibley in *A. C. L. R. R.* vs. *R. R. Commission of Georgia*, 281 Fed. 321:

> "'While in the business of buying and selling goods, interstate commerce may reach all the way from first purchase to final delivery, interstate transportation for the purpose of determining the rate to be charged may have narrower limits.' Compare *Loewe* vs. *Lawlor*, 208 U. S. at 301 with *Arkadelphia Milling Co.* vs. *St. Louis S. W. Ry. Co.*, 249 U. S. at 151."

PRINCIPAL CASES RELIED ON BY PETITIONERS

In the case of Texas etc. R. R. Co. vs. Sabine Tram Company, 227 U. S. 111, referred to as the Sabine Tram case, it was perfectly apparent that the transfer at Sabine was but a step in the unbroken movement of the lumber to foreign ports.

> "Upon the arrival of the lumber at Sabine it was carried without delay beyond and unloaded into the water in reach of the ship's tackle." 227 U. S. 126.

In Baltimore & Ohio R. R. Co. vs. Settle, 260 U. S. 166, the transfer at Oakley was obviously a device to evade the interstate rates. "The shippers had no place of business at Oakley. The delivery there was the completion of one stage in the contemplated movement to Madisonville." 260 U. S. 169.

> "The mere fact that cars received on inter-

state movement are reshipped by the consignee after a brief interval to another point, does not, of course, establish an essential continuity of movement to the latter point. The reshipment, although immediate, may be an independent intrastate movement. The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if the applicable tariffs do not confer reconsignment or transit privileges." 260 U. S. 173.

And in *R. R. Commission* vs. *Worthington*, 225 U. S. 101, there was direct attack upon a State Commission rate that actually covered the trimming and distributing in the hold of vessels destined for ports without the State.

> "By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, and the rate fixed by the Commission which is in controversy here is applicable alone to coal which is thus, from the beginning to the end of its transportation, in interstate carriage, and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage." 225 U. S. 108-109.

In *Pennsylvania R. R.* vs. *Clark Coal Co.*, 238 U. S. 468, the question involved was car distribu-

tion for the transportation of coal. "* * * for the purpose of filling contracts with purchasers in other States, coal is delivered f. o. b. at the mines for transportation to such purchasers."

In *Stafford* vs. *Wallace*, 258 U. S. 495, the question arose upon the Stock Yards Act, "The only question" being "whether the business done in the stockyards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulaton." 258 U. S. 517.

In the case of *Douglas Co.* vs. *Southern Railway Co.*, 216 Ill. Apps. 148, the controlling consideration seems to have been that with one unimportant exception the shipments were in the course of transit to the purchasers until final delivery to the purchasers, and that "plaintiff maintained no place of business in Charleston nor did it have a warehouse there." 216 Ill. App. 153-154.

In the case at bar the Florida plants were in reality distributing plants. The movement from those plants was in its essence local.

Respectfully submitted,

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GEORGE C. BEDELL,

As Amici Curiae.

SUPREME COURT OF THE UNITED STATES.

Nos. 176 and 177.—October Term, 1927.

Atlantic Coast Line Railroad Company, Petitioner, 176 *vs.* Standard Oil Company of Kentucky.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.
Standard Oil Company, Incorporated in Kentucky, Petitioner, 177 *vs.* Atlantic Coast Line Railroad Company.	

[November 28, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This case comes here for review on petitions for certiorari to the United States Circuit Court of Appeals for the Sixth Circuit by both parties, allowed March 21, 1927 (273 U. S. 691). The District Court's opinion is reported in 13 Fed. (2d) 633; that of the Circuit Court of Appeals in 16 Fed. (2d) 441.

The case was begun by a bill in equity filed by the Standard Oil Company, a corporation of Kentucky, in the District Court for the Western District of Kentucky against the Atlantic Coast Line Railroad Company, a corporation of Virginia, to secure an injunction forbidding the defendant from charging the complainant for the transportation of gasoline, refined oil, lubricating oil, and fuel oil from the cities of Port Tampa, Tampa and Jacksonville, all in Florida, to other points in the same state, at rates of freight other than the lawfully established intrastate rates for such commodities.

The bill avers that since June 15, 1923, the defendant railroad company has refused to accept shipments of the complainant from Port Tampa, Tampa and Jacksonville, Florida, to other points within the state at intrastate rates, and has compelled the complainant to pay thereon higher interstate rates, which it has done under

protest; that according to the records of the complainant it has already overpaid to the defendant, between June 15, 1923, and April 17, 1925, the sum of $63,000. The prayer is for a temporary injunction and that, if the merits of the case are adjudged in favor of the complainant, a permanent injunction be granted and the case be referred to a special master to determine the overcharges, and that a judgment be entered therefor with interest at 6 per cent. from the date the same were accepted by the defendant until paid.

The answer denies that the charges collected were for other than interstate business. A motion to dismiss was made, on the ground that the complainant had an adequate remedy either at the common law or under a special remedy provided by the Florida statute. This motion to dismiss was overruled by the District Court (*Standard Oil Company* v. *Atlantic Coast Line Railroad Co.*, 13 Fed. (2d) 633, and while on appeal error was assigned for this, it does not appear to have been considered by the Circuit Court of Appeals (16 Fed. (2d) 441), and is not assigned for error here. The jurisdiction rests on diverse citizenship of the parties and the only question before us is upon the merits.

The plaintiff maintains at Port Tampa, Tampa and Jacksonville large storage facilities, consisting of tanks and warehouses for receiving and storing gasoline, refined oil, lubricating oil and fuel oil. It does not produce or refine any of these products. Gasoline, refined oil and lubricating oil it buys from the Standard Oil Company of Louisiana from its refineries at Baton Rouge, Louisiana, while the fuel oil it buys from the Standard Oil Company of New Jersey from Tampico, Mexico. These four varieties of oil products are brought into Port Tampa and Jacksonville in tank steamers owned and chartered by the sellers, and, with the exception of lubricating oil, the oil is pumped by ships' pumps from the steamers through pipe lines owned by the plaintiff into plaintiff's storage tanks at Port Tampa and at St. Johns River Terminal, Jacksonville, Florida. Lubricating oil is pumped from the tank steamers by ships' pumps into tank cars at Port Tampa, or at Jacksonville and by them conveyed respectively over defendant's lines to plaintiff's storage tanks at Tampa, a distance of about nine miles from Port Tampa, or to Kings Road, a distance of about two miles from St. Johns River Terminal, near Jacksonville. All the products are purchased by the plaintiff

to be delivered to it by the sellers at Port Tampa and Jacksonville, title not passing to the plaintiff until the products have been so delivered, settlement between the seller and purchaser being made upon the basis of the amount actually delivered into tank cars and tanks. The prices to be paid for gasoline, refined oil and lubricating oil are the current market prices in effect at the time the products are delivered to plaintiff at Port Tampa and Jacksonville. Fuel oil is purchased on yearly contracts at stipulated prices. The tank cars used by the plaintiff in its business are not owned by the railroad company, but are leased by the plaintiff and hauled by the defendant over its lines in common carrier service.

At Port Tampa plaintiff maintains for the storage of gasoline five tanks, with an aggregate capacity of 110,000 barrels; for refined oil, storage tanks with a total capacity of 20,000 barrels; and for fuel oil, tanks with a total capacity of 127,000 barrels. At Jacksonville it maintains for the storage of gasoline, tanks with a total capacity of 162,000 barrels; for refined oil, storage tanks with a capacity of 40,000 barrels, and for fuel oil storage tanks with a total capacity of 145,000 barrels.

Throughout Florida the plaintiff maintains 123 bulk stations where it has sufficient tankage and storage facilities for gasoline, refined oil and lubricating oil to meet the current needs of its customers supplied from such stations. These stations ordinarily get their supply of gasoline and refined oil from the storage tanks maintained at Port Tampa and Jacksonville, by means of tank cars. Very little, if any, gasoline or refined oil is delivered to consumers directly from the storage tanks at Port Tampa and Jacksonville. The gasoline and refined oils are delivered from the bulk stations to plaintiff's consumers by means of tank wagons. Plaintiff also maintains a large number of service stations in the State of Florida, which, in the usual course of business, are supplied with gasoline and refined oil directly from the bulk stations, although occasionally a service station is supplied with gasoline supplied in tank cars directly from Port Tampa and Jacksonville.

Under ordinary business conditions plaintiff keeps in its storage tanks at Port Tampa and at Jacksonville a sufficient supply of gasoline and refined oil to take care of its requirements for from forty-five to sixty days; a sufficient supply of fuel oil for from thirty to sixty days; and in its storage tanks at Tampa and

at Kings Road a sufficient supply of lubricating oil for from sixty to ninety days, the exact time depending entirely upon business conditions and demands for the products in that section of the state. The plaintiff pays local taxes to the State of Florida on all of its products in hand in its storage tanks on the Florida assessing dates.

After the lubricating oil is placed in the storage tanks at Tampa and at Kings Road, it is distributed and sold in tank wagons, barrels and smaller containers, although a small percentage of same is sent out in tank wagon cars to plaintiff's bulk stations and possibly to some small consumers.

The fuel oil is furnished by the Standard Oil Company of New Jersey to the plaintiff under a yearly contract for a million barrels to be delivered monthly in tank steamers at Port Tampa and Jacksonville as needed. Approximately ninety-five per cent. of the fuel oil sold by plaintiff in Florida is on contracts made before the oil has been shipped from the point of origin to plaintiff at Port Tampa and Jacksonville. Most of these are for a period of a year, covering the requirements of the various consumers, with average monthly deliveries stipulated, although in actual practice shipments from the storage tanks to the consumers are accommodated to their needs as under requirement contracts. There is no separation of the fuel oil under contract from that not under contract, all being of the same grade. At the time the shipment of the fuel oil is made from the point of origin, plaintiff can not say where any particular cargo of same, or any part thereof, will go after it has been pumped into the storage tanks, to whom it will go, or when it will be shipped. At the time of shipment from the point of origin, the only destinations which can be given are Port Tampa and Jacksonville, respectively.

The railway company has nothing to do with the boat movement of the products used by the plaintiff in its Florida business. There is no through rate and no joint arrangement of any character between the water carrier and the defendant. Movement by boat, while interstate commerce, is not actually under regulation by the Interstate Commerce Commission. From two to four boats per month, with an average capacity of 45,000 barrels each, discharge their cargoes in plaintiff's storage facilities at Port Tampa and Jacksonville. A boat requires from one to three days to discharge its cargo, and while boats are engaged in discharging their

cargoes into the storage tanks of plaintiff, tank cars are being loaded from the same storage tanks, for the purpose of supplying plaintiff's bulk stations, service stations and possibly a small amount directly to some consumers.

Plaintiff has been conducting its business in the manner here stated for many years, and it was not adopted for the purpose of evading the payment of interstate rates. Its business could not be conducted without the storage facilities herein described, and until June 15, 1923, all shipments by the plaintiff from Port Tampa, Tampa and Jacksonville over defendant's lines to other points in Florida over purely intrastate routes, were accepted by the defendant as intrastate commerce. Since June 15, 1923, however, the defendant has classified these shipments as interstate commerce, and collected freight on the basis of interstate rates. Generally in respect to this transportation the intrastate rates approved by the Florida State Commission are lower than the interstate rates under the classification of the Interstate Commerce Commission, and it is the difference in favor of the plaintiff in the intrastate rates which has led to this litigation.

The District Court held that all the transportation of oil by the defendant for the plaintiff, after the oil reaches the storage tanks or tank cars, in Tampa, Port Tampa or Jacksonville, is intrastate commerce, and that the plaintiff is entitled to secure the transportation necessary in that commerce at intrastate rates. 13 Fed. (2d) 633. The Circuit Court of Appeals modified the order of the District Court, 16 Fed. (2d) 441, and held that the fuel oil landed at Port Tampa is a continuous foreign and interstate shipment from Tampico to its ultimate destination in Florida where it is used; that the gasoline and kerosene shipments through to Port Tampa must also be classified as interstate shipment from Baton Rouge to the bulk stations where they are distributed; that the lubricating oils received at Port Tampa must be treated as distributed from the Tampa and Jacksonville storage tanks, and that from those places its transportation is to be regarded as intrastate; that as to gasoline and kerosene in Jacksonville, as 13 per cent. of it received into the tanks is used locally at Jacksonville, it must all be regarded as intrastate; that as to Jacksonville fuel oil the record is obscure and the case must be sent back to the trial court for further evidence.

These two writs of certiorari are secured the one by the plaintiff oil company to reverse the decision of the Circuit Court of Appeals in so far as it reversed the District Court and the other by the defendant railway company to reverse that decision in so far as it affirmed the District Court.

It seems very clear to us on a broad view of the facts that the interstate or foreign commerce in all this oil ends upon its delivery to the plaintiff into the storage tanks or the storage tank cars at the seaboard, and that from there its distribution to storage tanks, tank cars, bulk stations and drive-in stations, or directly by tank wagons to customers, is all intrastate commerce. This distribution is the whole business of the plaintiff in Florida. There is no destination intended and arranged for with the ship carriers in Florida at any point beyond the deliveries from the vessels to the storage tanks or tank cars of the plaintiff. There is no designation of any particular oil for any particular place within Florida beyond the storage receptacles or storage tank cars into which the oil is first delivered by the ships. The title to the oil in bulk passes to the plaintiff as it is thus delivered. When the oil reaches these storage places along the Florida seaboard, it is within the control and ownership of the plaintiff for use for its particular purposes in Florida. The plaintiff is free to distribute the oil according to the demands of its business, and it arranges its storage capacity to meet the future variation in its business needs at Tampa, Port Tampa, or Jacksonville or St. Johns River Terminal.

The question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by mere billing or forms of contract, although that may be one of a group of circumstances tending to show such character. The reshipment of an interstate or foreign shipment does not necessarily establish a continuity of movement or prevent the shipment to a point within the same state from having an independent or intrastate character, even though it be in the same cars. *Chicago, M. & St. P. Ry. Co.* v. *Iowa*, 233 U. S. 334. The change from rail to ship has often been held consistent with a continuity of interstate or foreign commerce, even though there may be only local billing. *Texas & New Orleans R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *Railroad Commission of Louisiana* v. *Texas & Pacific Ry. Co.*, 229

U. S. 336; *Baer Bros. Mercantile Co.* v. *Denver & Rio Grande Railroad Co.*, 233 U. S. 479. On the other hand, in *Chicago, M. & St. P. Ry. Co.* v. *Iowa, supra,* the reshipment of an interstate shipment of coal after its arrival in the state in the same carload lots was held not inconsistent with the change from interstate to intrastate commerce. In *Baltimore & Ohio S. W. R. R. Co.* v. *Settle,* 260 U. S. 166, 170, a shipper billed his goods from one state to another, paying the interstate freight and reshipped them to another point in the second state, intending from the first to reach the latter destination, but interrupting the transportation only to take advantage of a difference in his favor between the through rate and the sum of those paid. It was held that the essential nature of the entire movement was in interstate commerce and that the shipper must pay the only lawful rate which was the interstate commerce rate to the final destination. These cases are illustrations to show that the determination of the character of the commerce is a matter of weighing the whole group of facts in respect to it.

The important controlling fact in the present controversy, and what characterizes the nature of the commerce involved, is that the plaintiff's whole plan is to arrange deliveries of all of its oil purchases on the seaboard of Florida so that they may all be there stored for convenient distribution in the state to the 123 bulk stations and to fuel oil plants in varying quantities according to the demand of the plaintiff's customers, and thence be distributed to subordinate centers and delivery stations, and this plan is being carried out daily. There is neither necessity nor purpose to send the oil through these seaboard storage stations to interior points by immediate continuity of transportation. The seaboard storage stations are the natural places for a change from interstate and foreign transportation to that which is intrastate and there is nothing in the history of the whole transaction which makes them otherwise, either in intent or in fact. There is nothing to indicate that the destination of the oil is arranged for or fixed in the minds of the sellers beyond the primary seaboard storages of the plaintiff company at Tampa, Port Tampa, Jacksonville or the St. Johns River Terminal. Everything that is done after the oil is deposited in the storage tanks at the Tampa destinations, or at the Jacksonville destinations is done in the distribution of the oil to serve the purposes of the plaintiff company that imported

it. Neither the sellers who deliver the oil nor the railroad company that aids the delivery of the oil to the storage tanks and tank cars at the seaboard has anything to do with determining what the ultimate destination of the oil is and has no interest in it and has no duty to discharge in respect to it, except that the railroad company, after the storage in Florida has been established for the purposes of the plaintiff company, accepts the duty of transporting it in Florida to the places designated by the plaintiff company.

The compensation for the transportation of the oil through the pipe lines from the steamers to the storage tanks or to the storage tank cars, and the transportation of those cars to the seaboard storage tanks of the plaintiff, is not here in question, and we are not asked to determine whether such deliveries to the storage tanks and cars on the seaboard from the steamers are interstate or foreign commerce.

We have no hesitation in saying that the nature of the commerce in controversy in this case was intrastate.

The case is like that of *General Oil Company* v. *Crain*, 209 U. S. 211, in which the General Oil Company sought an injunction against the collection of a tax for the inspection of certain of its oils in Tennessee, which it had brought into Tennessee and stored in tanks, and marked in storage tanks as oil already sold in Arkansas, Louisiana and Mississippi, and which remained in Tennessee only long enough to be properly distributed according to the orders therefor, and other oil in other tanks marked to be sold in those states but for which no orders at the time of shipment from the manufacturing plants had been received. This Court held that the Tennessee tax was not a burden on interstate commerce as applied to oil coming from certain states though ultimately intended for sale and distribution in states other than Tennessee; that the oil was subject to a tax while it was being stored in Tennessee for convenience of distribution and for reshipping in tank cars and barrels; that this was business done in Tennessee, where the oil was brought to rest, and was for a purpose outside its mere transportation.

It is not a question of maintaining the identity of oil as if a fungible in storage tanks through which it passed. The facts indicate that the plaintiff itself makes no such distinction and certainly agrees with no one to make such a distinction. The

fuel oil is not different from the other kinds. While the fuel oil is purchased by the plaintiff from a selling company, which has a year's contract, the plaintiff delivers it from Tampico, at the Florida seaboard, as it is likely to be needed to meet the obligations of a number of yearly contracts made by the plaintiff for its delivery in certain parts of Florida. No oil which comes in is labeled or identified in any particular way with any particular company, except after it is shipped to that company from Tampa or from Jacksonville. There is no passage of title from plaintiff to the contract purchasers and there is no setting apart of particular oil until the shipments are made at the end of this interval of weeks and months in accordance with the needs of those who have contracted to buy it.

The argument is made that these are continuous streams of oil from Baton Rouge or Tampico into bulk stations in the interior of Florida where it is sold to the customers of the plaintiff, and that its interstate character continues through that entire passage. It may be, as suggested in the argument, that oil is being discharged into plaintiff's receptacles for its storage at the same time that it is being discharged from the storage tanks into storage tank cars for its distribution, but that is not at all inconsistent with its being a closing of an interstate or foreign transportation and a beginning of intrastate distribution for the purposes and business of the plaintiff.

We think the view of the Supreme Court of Florida in a mandamus case in respect to these very rates is the correct one. *State* v. *Seaboard Air Line Ry. Co.; Same* v. *Atlantic Coast Line Railroad* Co., 109 So. Rep. 656. We concur in the reasoning and conclusions of the United States Circuit Court of Appeals for the Fourth Circuit in *Atlantic Coast Line Railroad Co.* v. *Standard Oil Co. of New Jersey; Seaboard Air Line Ry. Co.* v. *Same,* 12 Fed. (2d) 541.

Reliance is put on *Stafford* v. *Wallace,* 258 U. S. 495, to sustain the claim that this transportation of plaintiff's oil in Florida is interstate commerce. In that case the question under consideration was the validity of the Packers and Stockyards Act of Congress of 1921, c. 64, 42 Stat. 159, providing for the supervision by Federal authority of the business of the commission men and of the live stock dealers in the great stock yards of the country, and it was held

that for the purpose of protecting interstate commerce from the power of the packers to fix arbitrary prices for live stock and meat through their monopoly of its purchase, preparation in meat, and sales, Congress had power to regulate the business done in the stockyards, although there was a good deal of it which was, strictly speaking, only intrastate commerce. It was held that a reasonable fear upon the part of Congress, that acts usually affecting only intrastate commerce when occurring alone, would probably and more or less constantly be performed in aid of conspiracies against interstate commerce, or constitute a direct and undue obstruction and restraint of it, would serve to bring such acts within lawful Federal statutory restraint.

The Court relied much on the case of *United States* v. *Ferger*, 250 U. S. 199, where the validity of an act of Congress, punishing forgery and utterance of bills of lading for fictitious shipments in interstate commerce, was in question. It was there contended that there was and could be no commerce on a fraudulent and fictitious bill of lading, and therefore that the power of Congress could not embrace such pretended bill. In upholding the act, this Court, speaking through Chief Justice White, answered the objection by saying:

"But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (*In re Debs*, 158 U. S. 564) and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves."

The use of this authority as a basis for the conclusion in *Stafford* v. *Wallace* clearly shows that the case can not be cited to show what is interstate and what is intrastate commerce in a controversy over rates to determine whether they come normally within the regulation of Federal or State authority.

Our conclusion is that in all the cases presented by the plaintiff in its bill, intrastate rates should have been applied and should be

applied in the future, so long as the facts remain as they are now. This leads to a reversal of the decision of the Sixth Circuit Court of Appeals as to fuel oil from Port Tampa, as to gasoline and kerosene from Tampa, and an affirmation of its decision as to lubricating oil through Port Tampa; an affirmation of its decision as to gasolene from Jacksonville, as to kerosene from Jacksonville, and as to lubricating oil from Jacksonville. As to fuel oil from Jacksonville, the Circuit Court of Appeals left the matter undetermined. We think that fuel oil also from Jacksonville should be treated as subject to intrastate rates. The result is that the decision of the Circuit Court of Appeals is partly affirmed and partly reversed, that of the District Court is wholly affirmed, and the case is remanded to the District Court for further proceedings.

A true copy.

Test:

Clerk, Supreme Court, U. S.